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RECOMMENDATIONS FOR A NEW LIMITATIONS ACT

REPORT OF THE LIMITATIONS ACT CONSULTATION GROUP

MARCH 1991

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March 1991

The Honourable Howard Hampton
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Dear Mr. Attorney:

Your Consultation Group on the Limitations Act has the honour to submit its Report.

Yours truly,

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* "This report does not reflect the existing position of the Ontario Hospital Association with respect to limitation periods for public hospitals. The membership of Ontario Hospital Association passed a resolution at its November, 1990 Annual Meeting that OHA would prepare and present to the Government a Position Paper on Limitations. Once the Position Paper is developed and approved we will advise the Attorney General".

** "This report does not reflect the position of the Association of Municipalities of Ontario as regards actions against municipal corporations for non-repair of highways. The position of the Association of Municipalities of Ontario is contained in Section 284 of the Municipal Act."

PREFATORY NOTE

This report represents an attempt to mould unity out of the chaos of current limitations law. If it succeeds it is due to the breadth of vision, the commitment to a common purpose, and the generosity of spirit of the individual members of the group. They uniformly demonstrated a willingness to learn, to share, and to respect the concerns of others. The result is an unprecedented degree of consensus on the direction of limitations reform in Ontario.

Note should also be made here of the contribution of Susan Conrad, who represented A.R.C.H. throughout most of the consultation, and Rebecca Shamai, who represented the Ontario Woman's Directorate until her appointment to the Ontario Court (Provincial Division).

Finally, the Consultation's Group's thanks must be extended to Calvin Ferrier, student-at-law, who faithfully and consistently produced excellent records of discussion from each of the Group's 16 meetings.

Allan Q. Shipley
Convenor

REPORT OF THE LIMITATIONS ACT CONSULTATION GROUP

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PART I: INTRODUCTION

Limitations law has to do with statutorily prescribed time periods for commencing legal proceedings. Traditionally, a defendant could plead in defence that the proceeding was not begun within the time prescribed and therefore the plaintiff's remedy ought to be barred. The reason for creating limitation periods was to provide peace and repose for the defendant and for society in general, and to avoid litigation of stale claims.

Statutes of limitation originated in 16th-century English law in relation to real property claims. Numerous amendments were made in the following centuries, but Ontario's law has essentially been frozen in the 19th century. Only a few minor amendments have been made in the last 100 years.

Law Reform

One of the early projects of the Ontario Law Reform Commission was a review of limitations law and it published a major report in 1969 which would have rationalized and modernized Ontario's limitations law, within the context of its traditional roots.

In 1977 the Ministry of the Attorney General released a discussion paper on the Limitations Act which consisted of a draft bill with a brief commentary. The draft Bill reflected the recommendations of the OLRC report, with some modifications introduced from recent British Columbia reforms.

Discussion and work on limitations continued until a Bill was finally introduced in the Legislature in December 1983. Known as Bill 160, this Bill was intended to form the basis for further discussions leading to final legislation. However, by 1985 there was a change of government and other priorities intervened.

One of the problems with limitations reform has been that while individual complaints about the present law abound there has been little concerted external demand for reform. Limitations law has rested on a very delicate balance of many competing interests.

Other Jurisdictions

At the same time, interest in law reform was increasing in other jurisdictions. The British Columbia Report of 1974 and the Act of 1975 were followed by a new Uniform Law Conference Model Act in 1982 and law reform commission reports in Newfoundland (1986), New Brunswick (1988) Alberta (1989) and Saskatchewan (1989). Developments were also taking place in the United Kingdom, several Australian states and New Zealand.

While some of these proposals consisted of variations of the approach typified by Bill 160, others (Alberta, New Zealand, New Brunswick) had begun to take a fundamentally new approach - a single limitation period for all causes of action, running from the date of discovery of the cause of action.

The Discovery Principle

The so-called discovery principle is the single most significant modern development in limitations law. Traditionally, limitation periods have been calculated to run from the time the cause of action accrues. However, the time of accrual has been a somewhat vague notion that depends on the type of claim being made. More importantly, it was essentially an objective standard, determined independently of the plaintiff's knowledge. English courts and then Canadian courts came to realize that the law could act very unfairly if the limitation period expired before the plaintiff could have known that he or she might have a legal claim. The plaintiff would be denied a remedy before he or she was even aware of the harm. Building defects, industrial diseases, environmental harm, and some types of professional negligence are areas in which harm may lie hidden for many years. Accordingly, in 1986 the Supreme Court of Canada in Central Trust v. Rafuse, [1986] 2 S.C.R. 147, adopted a general rule that time begins to run when the material facts have been discovered or ought to have been discovered by the plaintiff. But, because the court had no means of imposing a final limitation period in the event that the claim remained undiscovered for a very long time, it meant that at least theoretically many defendants were without the benefit of any limitation period whatsoever and a new element of uncertainty was introduced into the law.

Creation of the Consultation Group

The Ministry of the Attorney General's continuing commitment to limitations reform received additional impetus in 1989. A special committee of the Canadian Bar Association - Ontario presented a major submission to the Attorney General requesting comprehensive reform of the Limitations Act. Also in that year the Court of Appeal decided that the present law was not broad enough to allow a childhood victim of incest sufficient time to overcome the trauma before commencing legal proceedings against the perpetrator. A private member's bill addressing the plight of sexual assault victims received approval in principle from the Legislative Assembly. (However, the bill died on the Order Paper before enactment.)

In December 1989 the Ministry of the Attorney General established a Limitations Act Consultation Group to conduct a comprehensive review of the legislation and to make recommendations for reform.

The creation of the Consultation Group was considered necessary because, as noted earlier, the present law represents a delicate balance of many competing interests. Furthermore, through the evolution of the law, many special interest groups have been granted specific provisions. Accordingly, to find a new balance would require the involvement of many different interests and the building of a consensus on the general direction of reform. Given the technical nature of much of limitations law and its essentially non-partisan nature, it was felt that the best prospects for reform would lie in reconciling as many interests as possible before introducing new legislation.

Composition of the Group

Of course, to keep the size of group within productive bounds, it was not possible to include representatives of every special interest. Consequently invitations were issued to a number of organizations that had been most involved in commenting on the 1977 discussion paper and on the 1983 Bill 160, having regard also to the impact on them of the discovery principle and the extent to which they illustrated problems in related fields. This resulted in representatives from the Ontario Medical Association, the Ontario Hospital Association, the Association of Municipalities of Ontario, the Council of the Ontario Construction Association, and design professionals (Association of Professional Engineers of Ontario, Consulting Engineers of Ontario, and the Ontario Association of Architects), and the Insurance Bureau of Canada.

As many of the reform proposals pay particular attention to the problems of the disabled, the Advocacy Resource Centre for the Handicapped was invited to participate.

The Ontario Women's Directorate agreed to represent the concerns of sexual assault victims.

Since the vast majority of the present Act consists of real property limitation periods, the Director of Titles for the Ministry of Commercial and Consumer Relations was asked to participate.

The Crown is a major litigant and the beneficiary of many special limitation periods, as well as a representative of the public interest, and therefore a senior member of the Crown Law Office -Civil was invited to participate.

The Canadian Bar Association - Ontario, as author of a comprehensive submission on reform and the most widely-based voluntary law association was also an essential participant.

The problem of the lack of an organization solely representing interests of plaintiffs was addressed in part by the addition of Professor Nathalie desRosiers of the University of Western Ontario Faculty of Law as a member at large.

The Policy Development Division of the Ministry of the Attorney General co-ordinated the meetings of the Consultation Group, prepared issues papers, and provided support services.

GENERAL OVERVIEW: THE BASIC SCHEME

In formulating its recommendations, the Consultation Group has been guided by the Supreme Court of Canada's adoption of the discovery principle and by the recommendations of the Canadian Bar Association - Ontario and the Alberta Law Reform Institute, (among others) for implementing the discovery principle.

A Uniform Two Year Limitation Period

The Consultation Group recommends a single limitation period of two years from the time of the act or omission for the commencement of any civil proceeding (except those not subject to any limitation period). The two year period is based on a reasonable amount of time following the wrongful conduct to obtain legal advice, consider the options and initiate legal proceedings if necessary.

Discovery Principle

It is assumed that in the vast majority of cases the plaintiff will be aware of the wrongful conduct at the time it occurs. However, in those cases where the plaintiff does not have knowledge of the material facts, then the two year period would not begin until he or she acquired the knowledge or ought to have acquired it. The Consultation Group agrees with the discussion paper of the Alberta Law Reform Institute that there are no rational grounds for different limitation periods for different types of claims, provided that the limitation period may be postponed if the plaintiff does not have knowledge of the claim.

Knowledge of material facts will be determined by reference to four specific criteria, including the significance of the harm.

Constructive Knowledge; Burden of Proof

Around this fundamental principle, certain clarifications, limits and exceptions have been built. First, knowledge may be attributed to the plaintiff who shows no diligence. Secondly, the burden is placed on the plaintiff to show that he or she did not have the requisite knowledge at the time of the act or omission giving rise to the claim.

Thirty Year Ultimate Limitation Period

Thirdly, an ultimate limitation period would be imposed, so that even if the claim were not discovered it would be barred after 30 years, or after 10 years in exceptional cases.

Shorter Ultimate: Special Cases

During the course of its deliberations the Consultation Group heard compelling arguments in favour of an ultimate limitation period shorter than 30 years in exceptional cases. However, it was not prepared to recommend even in these cases an ultimate limitation period of less than 10 years.

Criteria for Shorter Ultimate Limitation Period

Because it was not possible for the Consultation Group to consider every special limitation period now in existence, the Group recommends what it believes to be rigid criteria that the government should apply in assessing whether to enact a shorter ultimate limitation period. The government is asked to weigh the availability of evidence to the defendant, the cost of maintaining records, and the cost and availability of insurance against the likelihood of meritorious claims arising after 10 years.

Minors and Persons with Incapabilities

Special recognition of the legal impediments faced by minors and others lacking certain legal capabilities would be preserved and extended, so that the two year limitation period would not begin until the minor reached adulthood or a person with certain incapabilities acquired the ability to pursue the claim. In recognizing incapabilities that impede pursuit of a claim, the Consultation Group recommends that persons be dealt with on the basis of their own capabilities and with respect to the particular claim in issue. This would broaden the present law which provides the benefit of a postponed limitations period only to those who are completely incapable of managing any of their affairs. Under the proposed recommendations an individual assessment of the plaintiff's capabilities would be made with respect to the particular claim. Moreover, for those suffering long-term incapabilities the ultimate limitation period would not operate.

Appointment of Litigation Guardian; Notice to Proceed

For defendants who could be indefinitely exposed to undiscovered liability, procedures are recommended whereby they could begin the limitation clock. In the case of minors and those who are incapable the defendant could obtain a court order appointing a litigation guardian. In the case of any other potential plaintiff, the defendant could start time running by giving a notice to the potential plaintiff setting out the material facts.

Victims of Sexual Assault

Special provision is made for victims of sexual assault. In view of the extraordinary vulnerability of victims in a relationship of trust or dependence with the defendant and the enduring trauma resulting from violation of that relationship, and having regard to societal abhorrence of such conduct, the Consultation Group recommends that there be no limitation period whatsoever on sexual assaults occurring in or as a result of a relationship of authority, trust or dependency.

Victims of Non-sexual Assaults and Sexual Assaults by a "Stranger"

In addition, the Consultation Group considered it likely that in many cases the same psychological impediments to legal action would follow from sexual assault outside a proximate relationship and from non-sexual assaults within proximate relationships (domestic assault, child abuse). However, since the nature of the conduct constituting sexual assaults and other physical assaults is so diverse, it could not be conclusively presumed that every victim would be traumatized. Therefore it is recommended that there be a rebuttable presumption that a victim of these types of assault is incapable of pursuing the claim and is therefore entitled to postponement of the limitation period. So, for example, if the plaintiff brings the claim 10 years after the assault, the defendant would have to prove that the plaintiff had or should have "discovered" the claim and was capable of pursuing it at least two years before the current claim.

Claim Not Subject to Limitation Provisions

In common with limitations reform proposals elsewhere, the Consultation Group recommends that such matters as provincial offence proceedings, judicial review procedures, proceedings to enforce judgments and applications for declarations that seek no judicial remedy not be subject to these limitation recommendations.

Schedule of Limitation Periods

To avoid a return to the present state of the law where limitation provisions are hidden away in dozens of statutes, it is recommended that no limitation period in another statute have effect unless it is referred to in a schedule to the proposed new legislation.

Notice of Claim

Provisions barring proceedings where a notice of claim has not been given to the defendant would no longer be effective unless the defendant could prove prejudice arising from the failure to give notice.

Extinguishment of Title

It is recommended that upon expiration of the 30 year ultimate limitation period that not only the remedy be barred, but that the right and title on which it is based be extinguished.

Real Property Limitation Periods

It is recognized that limitation periods on actions to recover land and charges on land may warrant different treatment than personal actions. Pending a comprehensive review of Part I of the present Limitations Act, a recommendation is made to review the relevant corresponding provisions of Bill 160 as a possible first phase of real property limitation reform.

Applicability to the Crown

The non-government members of the Consultation Group strongly recommend that the Crown be made subject to the new Act.

Transition

The new scheme would apply to any act or omission that occurred before the effective date of the new legislation provided that the old limitation period had not expired. This will result in the extension of some limitation periods to a maximum of two years and the shortening of others to two years if a longer period would otherwise have applied.

In view of the seriousness of assault and sexual assault the new scheme would apply to those cases even if the old limitation period had already expired.

Matters Outside Scope of the Review

The Consultation Group did not consider limitation periods for bringing applications before administrative tribunals. Therefore no position is taken with respect to such matters.

As noted above, no substantive recommendations are made regarding real property limitations. Moreover, it should be particularly noted that the Consultation Group made no attempt to address issues relating to aboriginal land claims. Accordingly, the recommendations are not intended to prejudice any review of those issues.

PART II: SUMMARY OF RECOMMENDATIONS FOR A NEW LIMITATIONS ACT

1. In these recommendations,
"claim" means a matter giving rise to a proceeding in a court;
"defendant" includes respondent;
"plaintiff" includes applicant;
"sexual assault" means an assault of a sexual nature.

2. These recommendations apply to any claim, except

   (a) a proceeding to which the Provincial Offences Act applies;

   (b) an application for judicial review;

   (c) an application for a declaration;

   (d) an application to enforce a judgment or order of a court or an award in an arbitration to which the Arbitrations Act applies;

   (e) an action by a debtor in possession of collateral to redeem the collateral;

   (f) an action by a creditor in possession of collateral to realize on the collateral;

   (g) an action arising from a sexual assault if at the time of the assault one of the parties to the assault was

      (i) in a position of trust or authority with respect to the plaintiff,

      (ii) a person with whom the plaintiff was in a relationship of financial, emotional, physical or other dependency,

      (iii) a person having charge of the plaintiff; and

   (h) an application for an appeal or review for which time is limited by any Act or rule of court.

3. No proceeding shall be commenced after the expiration of two years after the date of the act or omission on which the claim is based.

4. The two year period referred to in Rec. 3 shall not begin to run until either,

   (1) the plaintiff has knowledge,

      (a) of the injury, loss or damage,

(b) that the injury, loss or damage was caused or contributed to by the act or omission of the defendant,

(c) of the identity of the defendant, and

(d) of the significance of the injury, loss or damage relative to the claim; or

(2) a reasonable person in the circumstances and with the abilities of the plaintiff ought to have the knowledge referred to in clauses 1(a) to (d),

whichever comes first.

5. The burden of proving that the plaintiff did not have the knowledge referred to in Rec. 4(1)(a) to (d) is on the plaintiff.

6. The provisions of Rec. 4 concerning postponement of the limitation period should not apply to the detriment of a purchaser for value acting in good faith.

7. (1) Where the plaintiff, including a personal representative of a deceased person, is a successor owner of a claim, for the purposes of Rec. 4 (determining knowledge of claim), as between the predecessor owner and the successor owner, the relevant knowledge is the knowledge that was first acquired or ought to have been first acquired.

(2) Where the plaintiff is a principal, for the purposes of Rec. 4 (determining knowledge of claim), as between the principal and an agent having a duty to communicate the knowledge in Rec. 4(1), the relevant knowledge is the knowledge that was first acquired by either of them, or ought to have been acquired by the principal.

8. Where a person having a claim dies, and the claim would be barred by the expiration of a limitation period within one year of the person's death, the limitation period shall be deemed not to expire before one year after the person's death.

9(1) The two year period for commencing proceedings (Rec. 3) shall not begin to run, where at the time of the act or omission,

(a) the plaintiff was a minor and no litigation guardian has been appointed in respect of the claim, until the plaintiff ceases to be a minor; or

(b) the plaintiff is, or was rendered,

(i) mentally incompetent,

(ii) of unsound mind, or

(iii) with respect to the claim, incapable of pursuing the claim because of

(A) physical, mental or psychological condition,

(B) physical restraint, or

(C) war or war-like operations or related circumstances,

and no litigation guardian has been appointed, until the condition terminates.

(2) The burden of proving entitlement to postponement under this Recommendation is on the plaintiff.

10. Despite Rec. 9(2), for the purposes of,

(a) an action arising from sexual assault to which these recommendations apply (sexual assault by a "stranger"); or

(b) an action arising from assault where at the time of the assault one of the parties to the assault was

(i) living with the plaintiff in an intimate and personal relationship, or

(ii) a person with whom the plaintiff was in a relationship of financial, emotional, physical or other dependency;

unless the contrary is proven on a balance of probabilities, the plaintiff shall be presumed to be a person to whom Rec. 9(1)(b)(iii)(A) applies (incapable of pursuing the claim because of physical, mental or psychological condition).

11. (1) Where a condition referred to in Rec. 9(1)(b) (incapability) arises after the two year period has begun to run, the running of time should be suspended for the duration of the condition, but in no case shall the limitation period expire before 6 months after the condition terminates.

(2) An agreement to submit a claim to an alternative dispute resolution process before commencement of proceedings shall be deemed to suspend the operation of the limitation period in Rec. 3 until the dispute is concluded or the defendant withdraws from the process.

12. (1) Where the two year period would be postponed under Rec. 9, (minority, "incapability"), any person may apply to the court for the appointment of a litigation guardian for the minor or person incapable in respect of a potential claim.

(2) Upon appointment of a litigation guardian in respect of a claim, the two year period for commencing proceedings shall begin to run in respect of that claim.

13. Despite Rec. 4 (undiscovered claims) no proceeding shall be brought after the expiration of 30 years after the date of the act or omission on which the claim is based.

14. The operation of a limitation period provided by Rec. 13 (ultimate limitation) is suspended during any period of time that,

(a) the plaintiff is in a condition referred to in Rec. 9(1)(b) (incapability), or

(b) the defendant fraudulently concealed any fact referred to in Rec. 4(1)(a) to (d) (elements of knowledge).

15. (1) In exceptional cases, a special ultimate limitation period of not less than 10 years may be created.

(2) The government should not prescribe a special ultimate limitation period unless it is clearly in the public interest, having regard to,

(a) (i) the likelihood of continuing changes in the standard of care, and

(ii) the difficulty of obtaining evidence of the earlier standard of care;

(b) the effect of potential liability in excess of 10 years on obtaining liability insurance or participating in another indemnification scheme; or

(c) the effect of potential liability in excess of 10 years on the costs of retaining records; and

(d) the unlikelihood of meritorious claims arising after 10 years.

16. Upon the expiration of 30 years from the act or omission under Rec. 13, or the further period applicable in accordance with Rec. 14 (suspension for fraud or "incapability"), the claim and the right or title on which it is based are extinguished.

17. (1) No party shall be added to any proceeding previously commenced, through an amendment of pleadings in respect of a claim to which the party is immune to liability by reason of expiration of the relevant limitation period.

(2) Paragraph 1 shall not be construed to prohibit the correction of a misdescription of a party.

18. For the purposes of Rec. 3, (commencement of the limitation period), in an action by a tortfeasor for contribution and indemnity against another tortfeasor, the date of the act or omission should be deemed to be the date when the tortfeasor was served with the claim by the plaintiff.

19. (1) Subject to Rec. 9 (minors, "incapability"), where a person considers that another person has a claim against him or her, he or she may cause a notice to proceed to be given to the other person, at which time the limitation period begins to run.

(2) Despite paragraph (1), the limitation period shall not begin where the person receiving the notice proves that upon receiving the notice, he or she did not have knowledge of the significance of the injury, loss or damage and that a reasonable person in the circumstances and with his or her abilities would not have that knowledge.

(3) A notice to proceed shall,

(a) be in writing;

(b) specify the circumstances out of which a claim may arise or may be alleged to arise, including

(i) a description of the suspected injury, loss or damage,

(ii) the extent to which the injury, loss or damage was caused or contributed to by the party on whose behalf the notice to proceed is given, and

(iii) the identity of the party on whose behalf the notice to proceed is given;

(c) give warning that any claim arising out of the circumstances stated in the notice is liable to be extinguished;

(d) state the name and address for service of the person on whose behalf the notice is given; and

(e) be signed by the person giving the notice or his or her solicitor.

(4) Paragraph (1) operates to benefit only a person on whose behalf the notice is given and only in respect of a claim arising out of the circumstances specified in the notice.

(5) A notice to proceed given under this provision is not an acknowledgment for the purposes of these recommendations and is not an admission for any purpose.

20. (1) In this recommendation "acknowledgment" means,

(a) an acknowledgment in writing signed by the person making it or his or her agent; or

(b) a part payment made by a debtor or his or her agent.

(2) Where,

(a) a person makes an acknowledgment of a claim for the recovery of property or a liquidated sum or for enforcement or relief from enforcement of a charge on property; and

(b) the acknowledgment is made before the claim is extinguished to a person having the claim or his or her agent or successor, or to an official receiver or trustee acting under the Bankruptcy Act (Canada), for the purpose of determining a limitation period for a claim by the person to whom the acknowledgment is made or his or her successor against the person making the acknowledgment, the claim shall be deemed to arise on the date on which the acknowledgment is communicated to the person to whom the acknowledgment is made.

(3) An acknowledgment of a claim for recovery of a liquidated sum need not include a promise to pay and is effective even though it includes a refusal to pay.

(4) An acknowledgment of a claim for recovery of interest operates also as an acknowledgment of a claim for the principal sum and for interest later falling due on the principal sum.

(5) Payment by a debtor to a creditor in respect of a security agreement or performance by a debtor of an obligation under a security agreement operates as an acknowledgment of a claim by the creditor against the debtor for realization on the collateral under the security agreement.

(6) Acceptance by a creditor of payment by a debtor in respect of a security agreement or of performance by a debtor under a security agreement operates as an acknowledgment of a cause of action by the debtor against the creditor for redemption of the collateral under the security agreement.

(7) An acknowledgment by a person who is a trustee at the time he or she makes the acknowledgment operates as an acknowledgment by any other person who is or later becomes a trustee of the same trust.

(8) An acknowledgment by a person who is in possession of property or collateral of a claim,

(a) to recover the property;

(b) to enforce an equitable interest in the property;

(c) to realize on the collateral;

(d) to redeem the collateral;

(e) to recover money under a security agreement in respect of the collateral; or

(f) to recover the property as trust property or as property into which trust property can be traced,

operates as an acknowledgment by any other person later in possession of the property or collateral, except a person who was also in possession of the property or collateral on the date of the acknowledgment.

21. A limitation period provided for by these recommendations or any other Act may be reduced or extended by an agreement in writing.

22. Despite any other Act, no provision requiring the giving of a notice of claim shall operate to bar a claim unless the court is of the opinion that the defendant would be prejudiced by the want or insufficiency of the notice.

23. The Ontario law of limitations and the analogous law of any other province or territory in Canada, or of any state or country, shall be characterized as substantive law for the purposes of the application of the rules of the conflict of laws, whether or not the particular law bars the remedy or extinguishes the right.

24. The limitation of actions that are provided under an Act, other than the proposed new Act, are those set out in the Schedule to the proposed new Act, and any limitation of action that is provided by or under an Act other than the proposed new Act and not set out in the Schedule is of no effect.

25. Pending a comprehensive study of Part I of the present Limitations Act, the relevant corresponding provisions of Bill 160 should be reviewed as a possible first phase of real property limitation reform.

26. The Crown should be bound by any new limitations scheme (Recommendation of non-government members).

27. (1) The new legislation should apply to an act or omission that occurs before the legislation comes into force if the limitation period that would otherwise apply has not expired.

(2) Where application of the new limitation period to an act or omission that occurs before the new legislation comes into force would shorten the limitation period that would otherwise apply, the limitation period for that claim should be the shorter of,

(a) the remainder of the limitation period that would otherwise have applied; and

(b) two years from the coming into force of the new legislation.

(3) Despite paragraph (1), new legislation should apply to all actions to which Rec. 2(g) (sexual assault) and Rec. 10 (non-sexual assault and sexual assault by a "stranger") apply.

CONSEQUENTIAL AMENDMENTS

1. Subject to Rec. 9, ("incapability", minority) a claim shall not be brought after the expiry of 10 years from the act or omission when the claim is in respect of,

   (a) the negligence of a hospital or hospital employee; or

   (b) professional negligence or malpractice by a member of a college of health professionals, except where the claim is in respect of a "retained object".

2. Subject to Rec. 9, ("incapability", minority) a claim shall not be brought after the expiry of 10 years from the substantial performance of the contract for any improvement to real property where the claim is in respect of any deficiency in the design, planning, general review, supervision or construction of any improvement to real property.

PART III: COMMENTARY ON THE RECOMMENDATIONS

1. In these recommendations,
"claim" means a matter giving rise to a proceeding in a court;
"defendant" includes respondent;
"plaintiff" includes applicant;
"sexual assault" means an assault of a sexual nature.

Recommendation 1: Terminology

"Claim"

The term claim is used throughout the recommendations in place of "cause of action" primarily to mark the departure from a limitations system where different causes of action are subject to different starting points and periods of different duration. Otherwise, "claim" is not substantially different from "cause of action".

The definition of "claim" does, however, contain a very important substantive element. It limits the scope of the recommendations to proceedings in a court. Consequently, proceedings before administrative tribunals are not subject to the recommendations.

"Sexual Assault"

It is intended that "sexual assault" in these recommendations have the same meaning as "sexual assault" in the Criminal Code, s.271, where the Supreme Court of Canada in R. v. Chase, [1987] 2 S.C.R. 293 has described sexual assault as an assault which is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated. Accordingly, it would include not only incest and rape, but also any non-consensual intentional touching in circumstances of a sexual nature.

2. These recommendations apply to any claim, except

(a) a proceeding to which the Provincial Offences Act applies;

(b) an application for judicial review;

(c) an application for a declaration;

(d) an application to enforce a judgment or order of a court or an award in an arbitration to which the Arbitrations Act applies;

(e) an action by a debtor in possession of collateral to redeem the collateral;

(f) an action by a creditor in possession of collateral to realize on the collateral;

(g) an action arising from a sexual assault if at the time of the assault one of the parties to the assault was

  (i) in a position of trust or authority with respect to the plaintiff,

  (ii) a person with whom the plaintiff was in a relationship of financial, emotional, physical or other dependency, or

  (iii) a person having charge of the plaintiff; and

(h) an application for an appeal or review for which time is limited by any Act or rule of court.

Recommendation 2: Applicability and Exemptions from Limitations

(a) Exemption - Provincial Offences Act

The limitation provisions do not apply to the time periods for prosecution of provincial offences. Nor do they apply to the quasi-civil proceedings under the Provincial Offences Act to enforce fines; e.g., s.69. Cf. Bill 160, s.1(a)(i).

(b) Exemption - Judicial Review

Judicial review, such as mandamus or prohibition, should not be subject to limitation provisions. Government action should always be reviewable; invalid government acts should not be validated by the passage of time.

(c) Exemption - Declarations

Declarations do not grant any judicial remedy. Therefore, since they impose no legal obligation on the defendant there is no justification for barring them. Moreover, there will be circumstances in which parties will wish to submit matters to court, such as interpretation of legal instruments like wills and contracts, without seeking a remedy from the court.

There is some concern that if there is no limitation period on seeking declarations the procedure may be used to circumvent limitation periods. Then, the declaration could be used in aid of non-judicial remedies. If evidence develops that there is abuse of the declaration power then this provision may have to be re-examined.

(d) Exemption - Enforcement of Judgments

At present there is a 20 year limitation period on enforcement of judgments. However, to impose a limitation period on judgments subjects the plaintiff to two limitation periods: the first applies to obtaining the original order; the second, to enforcing it. The second limitation period seems unduly burdensome. The defendant who is subject to a court order can hardly claim surprise or prejudice if requested to comply. It is the defendant's duty to comply. The plaintiff, having obtained judgment within the limitation period, should be able to enforce it whenever the defendant is able to satisfy it.

Although confusion can arise over whether a judgment has been satisfied, for example by part payment, in some cases these judgments would be kept alive in any event by the doctrines of acknowledgment and part payment. In yet other cases, defendants can escape their judgments by declaring bankruptcy.

Limitation policy would not affect the rules of court relating to time limits for renewing writs of execution.

(e) Exemption - Redemption of Collateral by Debtor in Possession

(f) Exemption - Realization of Collateral by Creditor in Possession

In the law of real property there is no limitation period on an action by a mortgagor in possession to redeem a mortgage. Possession by the mortgagor is tantamount to acquiescence by the mortgagee. Likewise, there is no limitation on an action by a mortgagee in possession to realize on the mortgage. The Ontario Law Reform Commission and other law reform commissions have recommended that in this respect there should be no distinction between real and personal property. Thus, a creditor who also holds securities as collateral for a loan would never be barred from realization on the securities if the borrower remained in default. The creditor, by taking possession of the collateral, has already taken steps to enforce his or her rights. cf. Bill 160, s.3(5).1; 3(5)2.

(g) Exemption - Sexual assault

A problem of rapidly increasing concern is limitations policy in cases of sexual assault. The concern arises from attempts by victims of sexual assault to seek redress through the civil courts and the obstacles created through the limitations policy. At present, the limitation period on an action for assault is four years. However, it is now recognized that in some circumstances the sexual assault will render the victim incapable of considering legal proceedings until many years after the event. These circumstances typically involve victims who were in a relationship of trust or dependency. Incest is a prime example, but recent experience reveals that other sexual abuses in relationships of trust have similar effects. A number of factors combine in these situations to render the victim incapable of initiating legal proceedings against the perpetrator: the nature of the act (personal violation), the perpetrator's position of power over the victim and the abuse of that position act effectively to silence the victim. Moreover, until recently, many victims of sexual assault were subject to social disapproval based on the perception that they were somehow to blame. In these circumstances, it is not uncommon for such a victim to cope with the violation by dissociating from the assaultive events, so that they are forgotten altogether or their emotional significance is denied. Many years of therapy may be required before the victim is able to confront the assailant. Where a victim was also physically, mentally or psychologically disabled at the time of the assault, another incapacitating factor is added to those above.

To impose a limitation period on actions for sexual assault in a relationship of trust or dependency is to reward assailants who have most effectively traumatized and silenced their victims. Clearly, the public interest does not require that immunity from liability be extended to those assailants.

One of the purposes of limitation periods is to discourage parties from giving vent to old disputes. However, in these cases, it appears that public policy with respect to incest and other sexual assaults demands that "old" disputes be allowed to proceed in order to provide relief for the victim and to deter abusers. Indeed, for criminal prosecution of this conduct, there would be no limitation period.

Another reason for limitation periods is the loss of evidence by an unsuspecting defendant while the undisclosed plaintiff waits until he or she has collected sufficient evidence. However, in these situations the defendant is unlikely to be prejudiced by the loss of evidence, since it is his or her sexual conduct that is in issue. Indeed, it is the plaintiff who is more likely to face evidentiary problems, because the assault will often have taken place when the plaintiff was young or otherwise vulnerable.

Similarly, the plaintiff is unlikely to delay beyond the first point at which he or she can bring the action since bringing the claim is often essential to the healing process.

Definition of Defendant

Not all sexual assaults have such traumatic effect on their victims. Nevertheless, the problem is not just limited to incest. It is not the biological relationship that causes the harm but the psychological relationship of being under the control or influence of the perpetrator. Thus in addition to family members, students, parishioners, wards, and long-term care patients, among others, are particularly vulnerable victims of sexual assault.

Another problem that must be addressed is that the trauma and resultant inability to proceed is not limited to instances where the person who breaches the relationship is directly involved in the assault For example, it is not unknown for parents to invite others to sexually assault their child. Therefore if one of the parties is in a special relationship, there will be no limitation period for any of the parties. While institutions having charge of a person who is a victim will be exposed to vicarious liability, it is consistent with the concern for victims to encourage institutions to take measures to protect their patients.

In order to achieve some uniformity and certainty, the description of defendants who would not be permitted a limitations defence is based on the Criminal Code provisions regarding sexual exploitation and the Child and Family Services Act regarding child abuse.

(h) Exemption - Appeals

The time for bringing appeals and taking other procedural steps are not limitations issues. They arise after proceedings have commenced. They are matters of court management and should not be subject to a substantive limitations statute.

3. No proceeding shall be commenced after the expiration of two years after the date of the act or omission on which the claim is based.

Recommendation 3: Primary Limitation Period

This recommendation, along with Rec. 4, forms the basis of the proposed new limitations scheme. The recommendation consists of two key elements: First, limitation periods begin to run at the time of the act or omission on which the claim is based; second,the primary limitation period for any proceeding is two years.

Commencement of Limitation Period

At present, limitation periods usually begin to run when the cause of action accrues. Traditionally, different causes of action accrue at different times. In 1986, the Supreme Court of Canada in Central Trust v. Rafuse ruled that as a general principle a cause of action accrues when the material facts on which it is based have been discovered by the plaintiff. However, from a defendant's point of view, this renders the starting point uncertain in every case since it depends upon the plaintiff's state of knowledge.

The adoption of the time of the act or omission as the starting point for calculation of all limitation periods should lead to greater certainty for everyone. It is already the relevant starting point for breach of contract and many tort claims. It will provide a common standard for all other claims. Where the claim remains undiscovered beyond the primary limitation period, it provides a necessary fixed point for calculation of the ultimate limitation period. It will also encourage potential plaintiffs to be vigilant, and not to sit on their rights, waiting for their claim to mature. It will emphasize that the discovery principle (discussed below) exists for exceptional cases.

Length of Limitation Period

In the current law there are seven general limitation periods ranging from one to 60 years, and dozens of special limitation periods. No rationale has been found for the differences in these periods other than historical accident (some originated in the 16th century) or successful modern lobbying efforts of special interest groups.

Provided that time will not expire until after the plaintiff has discovered the claim, there is no sound reason for prescribing different time limits for commencing legal proceedings for different claims. Once the plaintiff has discovered the claim, he or she only needs sufficient time to seek advice, consider settlement, and institute proceedings. While opinions may vary on the length of time necessary to take these steps, the amount of time does not vary significantly according to the cause of action. Two years, which has been the standard limitation period for motor vehicle claims, appears to be sufficient time for most plaintiffs to commence proceedings after discovery of their claim. Accordingly, it is proposed that there be a single limitation period of two years from the act or omission, or from discovering it later than the act or omission.

4. The two year period referred to in Rec. 3 shall not begin to run until either,

(1) the plaintiff has knowledge,

(a) of the injury, loss or damage,

(b) that the injury, loss or damage was caused or contributed to by the act or omission of the defendant,

(c) of the identity of the defendant, and

(d) of the significance of the injury, loss or damage relative to the claim; or

(2) a reasonable person in the circumstances and with the abilities of the plaintiff ought to have the knowledge referred to in clauses 1(a) to (d),

whichever comes first.

Recommendation 4: Discovery Principle

The most significant modern development in limitations law has been the judicial recognition of the discovery principle. The high water mark of this principle to date is the decision of the Supreme Court of Canada in Central Trust v. Rafuse where the court adopted a general rule that time begins to run when the material facts have been discovered or ought to have been discovered. Thus where the material facts are not known at the time of the act or omission, expiry of a limitation period does not extinguish a plaintiff's remedy before he or she is aware of sufficient facts to institute proceedings. In the vast majority of cases, the plaintiff will acquire this knowledge at the time of the act or omission, and thus, the limitation period will be two years. However, in a minority of cases some key element will not be apparent at the time of the act or omission. These small number of cases typically involve such matters as medical negligence, latent building defects and latent diseases.

4(1)(a): Injury, Loss or Damage

Fundamental to the discovery principle is knowledge of the harm. Until the plaintiff knows that harm has been done, there are no grounds on which to consider instituting proceedings. For example, harm resulting from a foreign object left in a patient after an operation, from a faulty bridge design, or from exposure to a toxic substance may not manifest itself for many years.

4(1)(b): Causation of the Harm

In some cases it will be the cause of harm that is not immediately apparent. For example, the plaintiff will be aware of a pain or illness but not be able to associate it with the conduct of the defendant.

4(1)(c): Identity of the Defendant

In some cases the identity of the defendant may not be known at the time of the act or omission. In an automobile accident it may be discovered that not only was the driver at fault, but also the car was defectively designed or manufactured.

4(1)(d): Significance of Harm Relative to the Claim

If the limitation period starts to run as soon as the plaintiff has knowledge of the harm, the cause of the harm and the identity of the defendant, in order to preserve their rights plaintiffs may be compelled to begin legal proceedings at the first moment they acquire this knowledge. It would not be in the public interest if limitations policy inadvertently promoted unnecessary litigation. Accordingly, some account should be taken of the significance of the harm, so the plaintiff is not necessarily required to commence proceedings at the first sign of damage. A hairline crack in the basement or a minor ache or pain may or may not develop into a problem that requires legal action. At the same time, in fairness to defendants, they should not be kept in jeopardy of a lawsuit while the plaintiff waits for the harm to fully materialize before taking action.

It is not easy to formulate an objective, certain test regarding when, after the harm is first evident, the limitation period should begin to run. But in most individual cases it will be possible to recognize a point when the plaintiff realized (or should have realized) that the harm was more than trivial. What determines the significance of the harm rests not in the quantum of damages being sought, but in the significance of the harm in the context of making a legal claim. In other words, the harm is significant when it is first apparent that legal action may be necessary or appropriate to remedy the harm. This point may be soon or long after the act or omission. In some cases a crack in a basement may immediately disclose significant harm that warrants immediate action; in other cases, it may not become apparent for some time that the crack is more than just a minor defect and is a symptom of a problem that would give rise to legal proceedings.

Other examples could easily be drawn from the medical field. A plaintiff may well be aware that an ache or pain has resulted from medical treatment, but only over time realize that the harm is permanent, or that the pain is the symptom of a worsening condition.

4(2) Constructive Knowledge.

Of course, if the only trigger for commencement of the limitation period were the plaintiff's actual knowledge the defendant would be at the mercy of a careless or wilfully blind plaintiff. Accordingly, it is necessary to impose upon the plaintiff some objective standard, by imputing a degree of knowledge to the plaintiff. The recommended standard is designed to create an expectation of reasonable diligence on the part of the plaintiff, while recognizing that individual plaintiffs vary in their capacity to be diligent.

5. The burden of proving that the plaintiff did not have the knowledge referred to in Rec. 4(1)(a) to (d) is on the plaintiff.

Recommendation 5: Burden of Proof

Since the benefit of postponement of the limitation period both accrues to the plaintiff and is based on the plaintiff's state of knowledge, the plaintiff should bear the burden of proving that he or she did not have the knowledge. The defendant should be able to rely on a presumption that the plaintiff had the requisite knowledge at the time of the act or omission and not have to prove matters that are largely within the control of the plaintiff.

The defendant would have the burden of proving that the claim was not brought within the primary two year limitation period. Cf. Bill 160, s.10(2).

6. The provisions of Rec. 4 concerning postponement of the limitation period should not apply to the detriment of a purchaser for value acting in good faith.

Recommendation 6: Protection of Purchasers for Value

Under Rec. 4 the running of time would be postponed in respect of a claim for conversion where the owner/plaintiff had not discovered the identity of the defendant. However, where one of the defendants is an innocent purchaser, commercial law has generally favoured those purchasers who have bought in good faith. Consequently, the owner/plaintiff cannot commence an action against the innocent purchaser where he or she discovers the identity of the purchaser more than two years after the conversion. The owner's remedy would be against only the wrongdoer. Cf. Bill 160, s.11.

7. (1) Where the plaintiff, including a personal representative of a deceased person, is a successor owner of a claim, for the purposes of Rec. 4 (determining knowledge of claim), as between the predecessor owner and the successor owner, the relevant knowledge is the knowledge that was first acquired or ought to have been first acquired.

(2) Where the plaintiff is a principal, for the purposes of Rec. 4 (determining knowledge of claim), as between the principal and an agent having a duty to communicate the knowledge in Rec. 4(1), the relevant knowledge is the knowledge that was first acquired by either of them, or ought to have been acquired by the principal.

Recommendation 7: Successor Owners/Personal Representatives/ Principals and Agents

Where the plaintiff's knowledge may be determinative of when time starts to run, a problem could arise where there are changes of ownership, for example, in cases of sales or gifts. Similar problems arise where the person having the claim dies before commencing the proceeding.

If time starts to run at the time of the principal owner's knowledge, the successor owner may be out of time if the principal owner has failed, for any reason, to advise the successor owner. On the other hand, if the successor owner's knowledge were to govern, the defendant could have continuing potential liability through a chain of successor owners.

Although there are other options that favour either the successor owner or the defendant, the approach most consistent with the discovery principle is to focus not on the status of the parties, but on the relevant knowledge. Thus, it is recommended that time begin to run when the relevant knowledge was first acquired or ought first to have been acquired, regardless of whether the plaintiff is the principal or successor owner.

Where the plaintiff is a party to a principal/agent relationship, the same principle should apply, so the relevant knowledge is that of the person first acquiring it, whether principal or agent.

8. **Where a person having a claim dies, and the claim would be barred by the expiration of a limitation period within one year of the person's death, the limitation period shall be deemed not to expire before one year after the person's death.**

Recommendation 8: Deceased Persons

A particular problem arises where the person having the claim dies before commencing the proceedings. There is not necessarily the direct transfer of interests that there is in the case of sale or gift. There can be a time lag in the appointment of a personal representative. Accordingly, where a limitation period would expire within one year after the potential plaintiff's death, it seems just to allow some period following the death of the claimant for the appointment of the personal representative and commencement of a proceeding. This principle is recognized in the Surrogate Court Act, albeit by a shorter postponement period.

9(1) **The two year period for commencing proceedings (Rec. 3) shall not begin to run, where at the time of the act or omission,**

- **(a) the plaintiff is a minor and no litigation guardian has been appointed in respect of the claim, until the plaintiff ceases to be a minor; or**
- **(b) the plaintiff is, or was rendered,**
  - **(i) mentally incompetent,**
  - **(ii) of unsound mind, or**
  - **(iii) with respect to the claim, incapable of pursuing the claim because of**
    - **(A) physical, mental or psychological condition,**
    - **(B) physical restraint, or**

(C) war or war-like operations or related circumstances,

and no litigation guardian has been appointed, until the condition terminates.

(2) The burden of proving entitlement to postponement under this Recommendation is on the plaintiff.

Recommendation 9: Postponement Based on Minority and Incapability.

Overview

The law has traditionally recognized that limitation periods should not run against persons who do not have full capacity in law to commence independent legal proceedings. At a minimum, this group would include minors and persons declared to be mentally incompetent. They can only be a party to and begin proceedings through a legal representative, a litigation guardian. The concept of litigation guardian for limitations purposes is discussed under Rec. 12(2).

9(1)(a) Minors

The postponement of the limitation period in respect of minors is the present law: Limitations Act, s.47. With a uniform two year limitation period (Rec. 3) the minor would have two years from majority to commence an action, or like other adults, two years from discovery if the claim were discovered after the minor attains majority.

9(1)(b) Incapability.

When discussing incapability, it is important to keep in mind first that legal capacity and physical or mental disability are quite different states. Although some persons with physical or mental disabilities may also not have independent legal capacity at law, not all persons with physical or mental disabilities lack legal capacity. Conversely, people (such as minors) may lack legal capacity to act in law, but not be subject to a physical or mental disability.

Specific Provisions

9(1)(b)(i) Mental Incompetence.

9(1)(b)(ii) Unsoundness of Mind.

These two states are recognized in the present law as entitling a person to postponement of a limitation period: Limitations Act, s. 47. Mental incompetency is a mental state that would entitle a court to declare a person mentally incompetent and appoint a committee to manage the person's affairs.

Unsoundness of mind is less well defined, but has been recognized by the courts as being a mental condition which renders the subject incapable of coping with the normal transactions of daily living.

9(1)(b)(iii) Incapability.

The concepts of mental incompetency and unsoundness of mind have been narrowly interpreted by the courts and have been confined to circumstances where the plaintiff exhibits a state of general incapacity; for example, being generally unable to manage his or her affairs. From our current understanding of human nature, we now know that persons may well be capable in some aspects of their affairs, while incapable - for any number of reasons - with respect to other areas of their affairs. Accordingly, it does not seem to serve the ends of justice to permit a limitation period to expire while they are unable to pursue their claim. Neither should they have to prove they are mentally incompetent or completely unable to manage their affairs in order to postpone expiration of the limitation period. If we are to respect individual differences and provide individual justice, then it should be sufficient if the plaintiff is unable to pursue this claim. The plaintiff's abilities with respect to other claims or other conduct should be irrelevant.

An incapability that manifests itself as an inability to obtain legal advice and instruct counsel would be of particular concern since the plaintiff would be effectively barred from taking legal proceedings, but there will also be occasions where the plaintiff has the capacity to instruct counsel but cannot make rational decisions about how to proceed. For example, trauma induced by the death of a family member in a fatal accident may render the plaintiff unable to face the prospect of immediately undertaking a case which would require him or her to relive the grief. Another cause for concern is where the defendant places a vulnerable plaintiff under duress. Whenever one of the conditions discussed below substantially impedes pursuit of the claim the plaintiff will be prejudiced.

9(1)(b)(iii)(A) Physical, Mental or Psychological Condition.

At the same time, defendants should not be exposed to legal proceedings on the basis of every allegation of plaintiff inability; otherwise, every other late plaintiff will assert some incapability and claim postponement of the limitation period. Defendants should not be at the mercy of plaintiffs' foibles and predilections. Like mental incompetence or unsoundness of mind, the incapability should be related to a condition that, if not permanent, is at least enduring. However, unlike mental incompetence or unsoundness of mind, it need not extend to all matters, but only to the claim in issue.

9(1)(b)(iii)(B) Physical Restraint

Presumably imprisonment or other forms of involuntary detention (as in a psychiatric facility) will not normally deprive a plaintiff in Ontario of access to legal services. However, should cases arise (perhaps, where the plaintiff is detained outside Ontario) then the plaintiff should not be prejudiced in pursuing a legitimate claim.

9(1)(b)(iii)(C) War or War-like Operations

Hopefully war or war-like operations will never be carried out in Ontario. However, it is possible that a plaintiff with a valid claim in Ontario could be involved in overseas operations which would make it extremely difficult to pursue a claim in Ontario. This factor is recognized in New South Wales legislation and has been endorsed by the New Zealand Law Reform Commission. Although the Ontario Law Reform Commission recommended repeal of s.48 of the present Act, whereby absence for any reason postpones the limitation period, this limited exception seems consistent with public policy.

9(2) Burden of Proof

As with Rec. 5, above, since the plaintiff is claiming the benefit, he or she must also bear the burden of proof.

10. Despite Rec. 9(2), for the purposes of,

(a) an action arising from sexual assault to which these recommendations apply (sexual assault by a "stranger"); or

(b) an action arising from assault where at the time of the assault one of the parties to the assault was

(i) living with the plaintiff in an intimate and personal relationship, or

(ii) a person with whom the plaintiff was in a relationship of financial, emotional, physical or other dependency;

unless the contrary is proven on a balance of probabilities, the plaintiff shall be presumed to be a person to whom Rec. 9(1)(b)(iii)(A) applies (incapable of pursuing the claim because of physical, mental or psychological condition).

Recommendation 10 - Presumption of Incapability

As noted above, (Rec. 2(g)) actions for sexual assault that occur in a close relationship would not be subject to any limitation period. This recommendation deals with all other sexual assaults and with non-sexual assaults in close relationships.

One of the grounds for exempting sexual assaults in close relationships from limitations completely is that the assault renders the victim unable to pursue the claim. That factor may also be present when the victim has been the victim of any sexual assault or a non-sexual assault in a close relationship. The violent and demeaning nature of rape or spouse abuse may leave the victim unable to cope with the prospect of legal proceedings. The tragic state of helplessness induced by repeated battering is dramatically described in the Supreme Court of Canada's judgment in Lavallee v. The Queen (May 3, 1990). Child abuse can leave a victim incapable of pursuing legal action until years after the age of majority is attained. A disabled person assaulted by a trusted care giver can experience the same inability to commence legal proceedings.

In such circumstances, it does not seem unreasonable to assume that most victims will be unable to commence civil proceedings within two years of the attack. The focus should be on the validity of the claim, and not on the condition of the plaintiff. Thus, instead of compelling every victim to prove inability to pursue the claim, the limitation period should be postponed unless the defendant can prove that the victim was capable of bringing the proceedings within the relevant two year limitation period.

The class of defendants who would have to prove the plaintiff's capability is drawn more narrowly than in the case of sexual assault in Rec. 2(g) because the defendant will be dealing with claims in respect of any assault. The broad compass of assault includes not only the most vicious or persistent beating but also the non-consensual administration of medical treatment and a shove by a teacher or police officer. It would be unduly onerous for a doctor or police officer to prove 10 years after the event that the plaintiff was in a position to commence the proceedings two years earlier.

However, in the case of sexual assault, or a non-sexual assault of a person in a personal and intimate relationship or a relationship of dependency, the defendant will have direct knowledge of the circumstances and will not have significant problems about the loss of evidence.

In all cases child victims will be protected by the postponement of the limitation period until at least two years after attaining majority.

11. (1) Where a condition referred to in Rec. 9(1)(b) (incapability) arises after the two year period has begun to run, the running of time should be suspended for the duration of the condition, but in no case shall the limitation period expire before 6 months after the condition terminates.

Recommendation 11(1): Intervening Disability

The present Limitations Act makes no provision for circumstances where time has begun to run but the plaintiff is subsequently rendered unable to pursue the claim. It is not impossible to imagine, for example, a person on the way to instruct a lawyer to commence an action for breach of contract being involved in an accident and lapsing into a coma. Under the present law, the limitation period on the claim arising from the accident would be postponed, whereas the limitation period on the contract claim would continue to run. The running of time in both cases should be suspended for the duration of the condition, and the limitation period should be deemed not to expire before 6 months after the condition terminates.

This recommendation ensures that the plaintiff will have a minimum of two "capable" years to pursue the claim, so that if the condition arises in the second month after time begins to run, time will be postponed while the condition endures, and there will be 22 months to pursue the claim after the condition terminates.

A short grace period is provided for those cases where the condition arises close to the end of the two year limitation period. Otherwise, if the condition arose in the 22nd month, the plaintiff would have only two months after termination of the condition to initiate the claim. If the condition lasted several years, two months may not be enough time to "pick up the pieces" again. Therefore a period of six months should be allowed.

11. **(2) An agreement to submit a claim to an alternative dispute resolution process before commencement of proceedings shall be deemed to suspend the operation of the limitation period in Rec. 3 until the dispute is concluded or the defendant withdraws from the process.**

Recommendation 11(2): Alternative Dispute Resolution

It would be unfortunate if limitations policy had the effect of encouraging plaintiffs to commence proceedings solely to prevent the expiration of the limitation period while they were involved in pre-pleading procedures to resolve the dispute. Accordingly, it is proposed that the running of the limitation period be suspended when the claim is the subject of alternative dispute resolution before initiating proceedings. A defendant who is concerned that the plaintiff is not proceeding expeditiously with alternative dispute resolution or is using it as a form of discovery can start time running again by withdrawing from the alternative dispute resolution process.

The definition of alternative dispute resolution should be open-ended since this is a developmental area. However, the definition should clarify that negotiation between the parties and their lawyers does not operate under this provision to suspend the limitation period. The parties can, however, enter into written agreements: see Rec. 20.

12. **(1) Where the two year period would be postponed under Rec. 9, (minority, "incapability"), any person may apply to the court for the appointment of a litigation guardian for the minor or person incapable in respect of a potential claim.**

(2) Upon appointment of a litigation guardian in respect of a claim, the two year period for commencing proceedings shall begin to run in respect of that claim.

Recommendation 12: Litigation Guardian

Under Rec. 9 the limitation period does not run against a minor or a person whose condition renders him or her unable to pursue the claim. The reasons for this provision are set out above. However, this policy leaves the defendants exposed to liability for up to 20 years in the case of minors, and indefinitely in the case of a permanently incapacitated plaintiff.

Situations may arise where the defendant is aware of the plaintiff's claim and wishes liability to be determined as soon as possible.

It is always open to the minor or the incapacitated plaintiff to initiate a claim by having a litigation guardian appointed. In that case, the limitation period starts to run from the appointment. However, the present law provides no procedure for the defendant to start time running against such plaintiffs.

Bill 160 recommended a procedure whereby the defendant could start time running by serving a "Notice to Proceed" on the plaintiff's parent or committee or the Official Guardian or Public Trustee as appropriate. However, while this approach solves a difficulty for the defendant, it does so at the expense of the parents, the Official Guardian and the others. They have no legal obligation to commence proceedings but could be held liable to the minor or incapacitated plaintiff if they were served with a notice to proceed but did not sue.

Another problem with this approach is that in the case of persons unable to sue because of their particular condition, the person served with the notice to proceed has no means of determining whether the potential plaintiff does fall within that legal category. At the time the notice to proceed is issued, there will have been no legal determination that the plaintiff is a person to whom the notice to proceed provisions apply. Until that determination is made, the Official Guardian or Public Trustee would be at risk of taking legal action on behalf of someone for whom they had no jurisdiction to act. Accordingly, since the notice to proceed approach is for the benefit of the defendant, it is proposed that the responsibility be placed on the defendant to seek the legal determination of the status of the plaintiff and have a litigation guardian appointed if necessary. This recommendation will require a complementary amendment to the rules of court.

Under Rule 7.05 a litigation guardian has a duty to attend diligently to the interests of the person under disability and to take all steps necessary for the protection of those interests.

13. Despite Rec. 4 (undiscovered claims) no proceeding shall be brought after the expiration of 30 years after the date of the act or omission on which the claim is based.

Recommendation 13: Ultimate Limitation Period

The acceptance of the discovery principle as the cornerstone of limitations policy raises the further question of whether a claim should ever be barred even if not discovered. The concept of a period after which no claim could be brought, even if not discovered, is commonly referred to as an ultimate limitation period.

The dilemma is clear: on the one hand, claims should not be barred before the plaintiff can discover the claim; on the other hand, the purpose of limitations is to bar claims. The resolution of the dilemma is not so straightforward. In the present state of the law following the Supreme Court of Canada decision in Central Trust, for most claims there is no ultimate limitation period. In an earlier case the Court, in recognizing the implications of adopting the discovery principle, clearly preferred discovery as the "lesser of two evils".

Nevertheless, there are valid reasons for imposing an ultimate limitation period, the foremost being that a limitations policy that does not bar claims is hardly a limitations policy. However, there are more specific reasons.

Record Retention Costs

Defendants who have significant contact with the public will often find it difficult to identify which public dealing will give rise to a legal claim. Most patients will remember their visit to the doctor; the doctor will find it difficult several years later to remember a patient seen only once. One way they can defend themselves against possible claims is to keep records. However, where liability can continue until a claim is discovered, prudent defendants will want to retain their records forever. But keeping records is a costly matter. Thus, they are faced with making an impossible decision of whether to destroy their records and risk being unable to defend a ruinous claim, or to bear the ever increasing expense of retaining the records on the slight chance that a claim will be brought.

Insurance

Another way for defendants to protect themselves is through insurance. However, for some types of activities defendants can only obtain claims-based insurance. That is, the defendant must have a valid insurance policy at the time he or she is sued. It is not enough that there was insurance at the time the act or omission occurred. This means that these defendants may have to maintain an insurance policy long after they have ceased to practice, or have retired. For some types of activities, such as nuclear engineering, insurance simply is not available.

Changing Standards

Many types of activities are subject to dramatic changes in standards and practices over time. The further removed the claim is from the time of the act or omission the more difficult it can be to prove what the standards and practices were at the relevant time. It is very difficult to have confidence in the justice of a decision which must be made in the absence of satisfactory evidence.

Costs of Defence

Even if a claim is unmeritorious defending it entails significant costs that cannot be recovered from the plaintiff. While this is a risk that everyone has to keep in mind, where the litigation follows many years after the event, the costs of searching for evidence and witnesses are even greater.

Social Costs

With the passage of time, the pool of meritorious claims inevitably decreases, but as long as there is the possibility of one meritorious claim, the costs of protecting against that unknown possibility continue to mount. Eventually the costs to society far outweigh the likelihood of a meritorious claim.

Even though a plaintiff's claim may ultimately be barred, there is a social net of health care and compensation schemes to provide some basic care for the plaintiff.

Length of Ultimate Limitation Period

Most jurisdictions that have struggled with this dilemma have accepted that some ultimate limitation period is justified. Accepting the concept of an ultimate limitation period is perhaps the easier step. The more difficult step is determining the length of the ultimate limitation period.

Law Reform Commission proposals range from ten to thirty years. This recommendation is for a thirty year ultimate limitation period. A thirty year period is recommended having regard to the reasons for the discovery principle, that is, that time should not run against persons who have no reasonable grounds to suspect that they have a claim. We already know that some types of claim have long latency periods. The effects of industrial diseases may not show up for decades. A deficiency in title to property is likely to lie undetected for years until the plaintiff finally decides to sell the property. Likewise, pollution and hazardous waste may remain hidden for long periods. And, although special provisions have been made for some types of assault and abuse, it does not seem unlikely that other traumatized victims will likewise require long periods of readjustment before they can commence legal proceedings.

One of the problems of choosing an ultimate limitation period is that we do not have long enough experience under the discovery principle to know how many claims might come forward that were previously barred.

Another factor influencing the choice of a long ultimate period is the position of minors. Since they could have as much as 20 years from birth in which to bring a claim, it would have been difficult to choose a shorter ultimate limitation period.

A thirty year period is fixed by the limitations legislation in British Columbia.

Finally, the recommendations make allowances for a shorter ultimate limitation period in restricted cases; see below.

14. The operation of a limitation period provided by Rec. 13 (ultimate limitation) is suspended during any period of time that,

(a) the plaintiff is in a condition referred to in Rec. 9(1)(b) (incapability), or

(b) the defendant fraudulently concealed any fact referred to in Rec. 4(1)(a) to (d) (elements of knowledge).

Recommendation 14: Ultimate Limitations - Exceptions

(a) Unable to Pursue Claim

The same reasons for suspending the operation of the primary limitation period where the plaintiff is unable to pursue the claim apply equally to the ultimate limitation period. No person should have his or her rights barred while in the condition which renders them unable to take steps to pursue their rights. It would be open to the defendant in appropriate cases to apply for the appointment of a litigation guardian.

(b) Fraudulent Concealment

Similarly, where the defendant has fraudulently concealed any fact essential to the plaintiff's knowledge the defendant cannot expect to rely on his or her own fraud to defeat the limitation period.

15 (1) In exceptional cases, a special ultimate limitation period of not less than 10 years may be created.

(2) The government should not prescribe a special ultimate limitation period unless it is clearly in the public interest, having regard to,

(a) (i) the likelihood of continuing changes in the standard of care, and

(ii) the difficulty of obtaining evidence of the earlier standard of care;

(b) the effect of potential liability in excess of 10 years on obtaining liability insurance or participating in another indemnification scheme; or

(c) the effect of potential liability in excess of 10 years on the costs of retaining records; and

(d) the unlikelihood of meritorious claims arising after 10 years.

Recommendation 15: Special Ultimate Limitation Period

The discussion of Rec. 13 set out several reasons in favour of an ultimate limitation period. It appears that in some cases the reason for an ultimate limitation period may be so compelling that an even shorter ultimate limitation period can be considered.

Ten Year Special Limitation

No special ultimate limitation period should be shorter than 10 years. Ten years is recommended as the minimum ultimate limitation period on the understanding that even among major defendant groups subject to undiscovered claims (medical and building professions) most claims are discovered within 10 years. Also 10 years is the shortest ultimate limitation period that has been recommended by a Canadian law reform commission.

Guidelines

It is not possible to anticipate all those specific instances in which a short ultimate period is justified. Therefore, a set of guidelines has been recommended to assist government policy making when considering requests for a short ultimate period.

Changing Standards of Care

Health service providers are especially vulnerable to changing standards of practice. The problem is that standards may change rapidly - within 5 to 10 years - but not definitively, so that it is often impossible long after the event to say what the standard was at any particular time. The standards are always in transition. Indeed, even when claims are brought within the limitation period it is often difficult to establish the relevant standard of care.

Other professions, such as the building design professions, are also subject to changing standards of care. Although for some professions changes can be documented through amendments to professional regulations or codes, in other cases standards change in much the same way as they do in the health care field.

Insurability

Insurance problems exist for many groups and professions. The costs of insurance cause some professionals to shift the nature of their practice to less risky services. As a result, there may be a reduction in some types of services available to the public.

The insurance problems of design professionals, for example, are particularly acute. Canadian professionals must buy their insurance in a North American market where pricing is influenced by the limitation period applicable to professional services. Because most American states have much more protective legislation for the design professions, insurance costs for Ontario professionals under a 30 year limitation period would likely be prohibitive.

The insurance concerns of some professional engineers have already been recognized. Some types of engineering, such as nuclear, aeronautical and marine, are virtually uninsurable and have therefore been exempted from the compulsory insurance provisions of the Professional Engineers Act.

As with records, however, everyone is expected to bear any costs of maintaining insurance for a minimum 10 year period. To be eligible for consideration of a ten year ultimate period, it must be shown that the costs of insurance beyond 10 years outweigh likely benefits to the public.

Records Retention

Anyone who has visited a family practitioner's office has likely seen walls lined with medical records. Doctors and hospitals deal with a staggering number of patients on an annual basis. The record storage problems of these professionals over the lifetime of their practice are enormous. Moreover, the prudent practitioner would want to keep these records after retirement as well, since an undiscovered claim can come forward at any time. While design professionals do not have the same number of files as doctors, individual files can be very large, so that the net result is similar.

At the same time, there are many other reasons why professionals retain records - e.g. professional regulation, income tax, research, etc. Accordingly, in considering the need for a short ultimate limitation period, the government should have regard only to the direct relationship between the records storage problems and the potential for liability in excess of 10 years.

Meritorious Claims Unlikely After Ten Years

These problems of records, standards and insurance would not warrant special attention if a significant number of meritorious claims were discovered only toward the end of the thirty year ultimate limitation period. However, where it can be shown that it is unlikely that meritorious claims would arise after 10 years, then there are reasonable public policy grounds for recognizing a shorter ultimate limitation period.

In considering the likelihood of meritorious claims, the government may have regard to the extent to which the proposed exempt group or activity is subject to regulation, discipline and quality controls.

Since it is predictable that meritorious claims will be brought forward after 10 years by minors and by persons who are unable to pursue their claim, these plaintiffs would not be subject to the ultimate limitation period.

16. Upon the expiration of 30 years from the act or omission under Rec. 13, or the further period applicable in accordance with Rec. 14 (suspension for fraud or "incapability"), the claim and the right or title on which it is based are extinguished.

Recommendation 16: Extinguishment of Title

Traditionally, limitation periods have been treated as procedural in nature. They were available to the defendant on an optional basis to plead in defence of a claim. They operate to bar the plaintiff from pursuing his or her remedy. They do not act upon the plaintiff's substantive rights.

One very notable exception is the limitation periods in respect of real property. Under section 15 of the Limitations Act expiry of a limitation period not only bars the right to recover the land but extinguishes the owner's title. Because certainty of title is crucial in real property matters this approach has been unquestioned. However, many law reform commissions, including the Ontario Law Reform Commission, have recommended this policy be extended to all limitations, since a right without a remedy is generally of little value. A right that is unenforceable is usually no right at all. It is confusing to the public to maintain that technical legal distinction.

Another influential factor is that the distinction between procedural and substantive limitations policy creates problems regarding conflicts of law: see Rec. 23 below.

However, where the discovery principle is an essential element of limitations policy, there could be some difficulty in identifying the point at which the right is extinguished. A defendant who acts on the basis that the plaintiff's title is extinguished after the expiry of the two year primary limitation period may find that the plaintiff had not in fact discovered his or her claim and that the plaintiff's rights or title were still valid. Thus, the only certain point for the defendant is the expiry of the ultimate limitation period, i.e. thirty years after the act or omission on which the claim is based.

17. (1) No party shall be added to any proceeding previously commenced, through an amendment of pleadings in respect of a claim to which the party is immune to liability by reason of expiration of the relevant limitation period.

(2) Paragraph 1 shall not be construed to prohibit the correction of a misdescription of a party.

Recommendation 17: Amendment of Pleadings

One of the greatest areas of uncertainty in the present law is the effect of limitations periods where one of the parties seeks to amend the pleadings to add a party or a claim that would otherwise be statute-barred. This method of defeating limitation periods has become so prevelant that "how-to" articles are published in legal journals.

The lenience of the courts in permitting such amendments is easy to understand in the context of the present law. If the defendant was or should have been aware that there were other possible claims or plaintiffs arising from the subject matter of legal proceedings already commenced, then the defendant would not usually be greatly prejudiced by the addition of a further claim or parties. Moreover, from a procedural point of view, there are strong policy reasons for preferring all matters arising from the same transaction or occurrence to be tried at the same time.

However, with the acceptance of the discovery principle, there is less justification for permitting amendments of pleadings to add statute-barred claims or parties. Where the plaintiff can show that the claim or the party was not discovered within two years then the limitation period will not expire; otherwise, the defendant should be able to rely on the expiration of the limitation period and not be subject to ever-expanding proceedings.

Even with reasonable diligence, honest mistakes can happen. Correction of such errors that cause no prejudice to the defendant should continue to be permitted if the limitation period technically has expired. The practice of commencing actions against unnamed defendants (e.g. John Doe) should no longer be necessary with the adoption of the discovery principle.

18. **For the purposes of Rec. 3, (commencement of the limitation period), in an action by a tortfeasor for contribution and indemnity against another tortfeasor, the date of the act or omission should be deemed to be the date when the tortfeasor was served with the claim by the plaintiff.**

(Section 9 of the Negligence Act should be repealed.)

Recommendation 18: Contribution Claims

Under the present law, if two or more persons have caused harm to the plaintiff in the same transaction or occurrence, the plaintiff is entitled to recover all of his or her damages from either one of the wrongdoers. Although often the plaintiff will sue all possible wrongdoers he or she need not do so. Any wrongdoer found liable to the plaintiff may bring a claim against another wrongdoer for contribution for the wrongdoer's share of the liability. The limitation period on the claim against the second wrongdoer begins when the first wrongdoer is adjudged to be liable to the plaintiff. This approach allows the first wrongdoer to avoid commencing legal proceedings until he or she knows that he or she has been found liable to the plaintiff.

Under the Negligence Act the first wrongdoer has one year from judgment against him or her to begin the claim.

The difficulty with the present law is that the first wrongdoer can wait to commence legal proceedings against the second wrongdoer until long after the limitation period between the second wrongdoer and the plaintiff has expired, even though the first wrongdoer's claim is based on the second wrongdoer's liability to the plaintiff. If the second wrongdoer had been sued by the plaintiff in a timely manner, the second wrongdoer may have been able to defeat the plaintiff's claim. But, years later, the second wrongdoer may have lost his or her evidence or the plaintiff may no longer exist.

The Ontario Law Reform Commission recently examined the law relating to contribution among wrongdoers and recommended that there be no changes to the basic principles of contribution. In the context of their particular study they did not recommend major reforms of the limitations provisions. Nevertheless, in the context of a comprehensive review of limitations policy, especially with emphasis upon the discovery principle, it does not seem unfair to encourage the first wrongdoer to commence proceedings for contribution as soon as possible. Thus, in these proposals, it is recommended that time against the first wrongdoer begin to run not when he or she is found liable to the plaintiff, but as soon as the plaintiff serves him or her with the original claim. It is at that point that the first wrongdoer is on notice to consider what other wrongdoers may be liable.

By moving the limitation starting point of the first wrongdoer's contribution claim from the date of judgment up to the date of the plaintiff's claim, the limitation policy shortens the second wrongdoer's exposure to potential liability and increases the second wrongdoer's ability to defend the claim.

19. (1) Subject to Rec. 9 (minors, "incapability"), where a person considers that another person has a claim against him or her, he or she may cause a notice to proceed to be given to the other person, at which time the limitation period begins to run.

(2) Despite paragraph (1), the limitation period shall not begin where the person receiving the notice proves that upon receiving the notice, he or she did not have knowledge of the significance of the injury, loss or damage and that a reasonable person in the circumstances and with his or her abilities would not have that knowledge.

(3) A notice to proceed shall,

(a) be in writing;

(b) specify the circumstances out of which a claim may arise or may be alleged to arise, including

(i) a description of the suspected injury, loss or damage,

(ii) the extent to which the injury, loss or damage was caused or contributed to by the party on whose behalf the notice to proceed is given, and

(iii) the identity of the party on whose behalf the notice to proceed is given;

(c) give warning that any claim arising out of the circumstances stated in the notice is liable to be extinguished;

(d) state the name and address for service of the person on whose behalf the notice is given; and

(e) be signed by the person giving the notice or his or her solicitor.

(4) Paragraph (1) operates to benefit only a person on whose behalf the notice is given and only in respect of a claim arising out of the circumstances specified in the notice.

(5) A notice to proceed given under this provision is not an acknowledgment for the purposes of these recommendations and is not an admission for any purpose.

Recommendation 19: Notice to Proceed

With the adoption of the discovery principle, where commencement of the limitation period is dependent on the plaintiff's state of knowledge, it may happen that the defendant is aware of the claim before the plaintiff. This could be the case where there is a large corporate defendant and many potential plaintiffs. The defendant may find it desirable to deal with these claims as quickly as possible and all at once. Accordingly, on the recommendation of the Canadian Bar Association - Ontario, provision has been made for the plaintiff to give a Notice to Proceed, whereupon time would commence to run against the potential plaintiff. The Notice to Proceed would contain enough information to permit the plaintiff to identify the claim and to seek advice. But where, upon receipt of the notice, the plaintiff would still not be aware of the significance of the harm,time would not run. Otherwise, the defendant could use the notice procedure to curtail latent damage claims.

To protect the defendant, it is provided in Rec.19(4) that the notice is not an acknowledgment. Therefore, if in fact the plaintiff had already discovered the claim, service of the notice would not re-start the limitation period.

This recommendation is based on Bill 160, s.14, which created a Notice to Proceed but only with respect to persons under a legal disability. Under the present recommendations provision for persons unable to pursue the claim is made under Rec.12.

20. (1) In this recommendation "acknowledgment" means,

(a) an acknowledgment in writing signed by the person making it or his or her agent; or

(b) a part payment made by a debtor or his or her agent.

(2) Where,

(a) a person makes an acknowledgment of a claim for the recovery of property or a liquidated sum or for enforcement or relief from enforcement of a charge on property; and

(b) the acknowledgment is made before the claim is extinguished to a person having the claim or his or her agent or successor, or to an official receiver or trustee acting under the Bankruptcy Act (Canada),

for the purpose of determining a limitation period for a claim by the person to whom the acknowledgment is made or his or her successor against the person making the acknowledgment, the claim shall be deemed to arise on the date on which the acknowledgment is communicated to the person to whom the acknowledgment is made.

(3) An acknowledgment of a claim for recovery of a liquidated sum need not include a promise to pay and is effective even though it includes a refusal to pay.

(4) An acknowledgment of a claim for recovery of interest operates also as an acknowledgment of a claim for the principal sum and for interest later falling due on the principal sum.

(5) Payment by a debtor to a creditor in respect of a security agreement or performance by a debtor of an obligation under a security agreement operates as an acknowledgment of a claim by the creditor against the debtor for realization on the collateral under the security agreement.

(6) Acceptance by a creditor of payment by a debtor in respect of a security agreement or of performance by a debtor under a security agreement operates as an acknowledgment of a cause of action by the debtor against the creditor for redemption of the collateral under the security agreement.

(7) An acknowledgment by a person who is a trustee at the time he or she makes the acknowledgment operates as an acknowledgment by any other person who is or later becomes a trustee of the same trust.

(8) An acknowledgment by a person who is in possession of property or collateral of a claim,

(a) to recover the property;

(b) to enforce an equitable interest in the property;

(c) to realize on the collateral;

(d) to redeem the collateral;

(e) to recover money under a security agreement in respect of the collateral; or

(f) to recover the property as trust property or as property into which trust property can be traced,

operates as an acknowledgment by any other person later in possession of the property or collateral, except a person who was also in possession of the property or collateral on the date of the acknowledgment.

Recommendation 20: Acknowledgments

In the present Act, many sections of Part I deal with specific instances in which an acknowledgment of a cause of action or part payment of a debt serve to start the limitation period running again. Bill 160 attempted to consolidate and restate most of these rules in modern statutory language.

These recommendations incorporate the provisions of Bill 160 almost verbatim.

21. A limitation period provided for by these recommendations or any other Act may be reduced or extended by an agreement in writing.

Recommendation 21: Tolling Agreements

This provision simply reaffirms the rights of the parties to enter into a written agreement to create their own limitation periods that would override the provisions of the legislation.

22. Despite any other Act, no provision requiring the giving of a notice of claim shall operate to bar a claim unless the court is of the opinion that the defendant would be prejudiced by the want or insufficiency of the notice.

Recommendation 22 - Notice of Claim

A number of statutes contain requirements that the plaintiff serve a notice of claim on the defendant within a fixed period of the act or occurrence. In some cases failure to serve the notice bars the claim completely. Consequently, such notice of claim provisions operate as a limitation period within a limitation period. Most notable is the snow and ice provision of the Municipal Act, which requires the plaintiff intending to sue a municipality for failure to remove snow and ice on a sidewalk to serve a notice of claim within seven days of the incident.

The rationale given for notice of claim provisions is that large public defendants which come into daily contact with large numbers of the public must receive timely notice of complaints in order to investigate the matter, collect evidence, and remedy any harm so that more claims are not made.

These notice of claim provisions have come under uniform criticism from law reform bodies and are unpopular with the courts. They are traps for unwary litigants. Some are so short that the injured plaintiff may still be in the hospital when the notice of claim period expires. Another criticism is that there is no rationale for the groups of defendants that have been able to secure these special provisions. Many large organizations are able to defend themselves successfully without the advantage of any such provisions.

The Ontario Law Reform Commission and Bill 160 would have provided relief against notice of claim provisions if the plaintiff could show that the defendant would not be prejudiced if the claim were to proceed. Even this, however, seems to be a heavy burden to place on a private plaintiff who has no knowledge of the defendant's management of a large institution or organization. Accordingly, it is recommended that, since the defendant is claiming the benefit of the notice provision, the burden should fall on the defendant to show that it would prejudiced if the claim were to proceed.

23. The Ontario law of limitations and the analogous law of any other province or territory in Canada, or of any state or country, shall be characterized as substantive law for the purposes of the application of the rules of the conflict of laws, whether or not the particular law bars the remedy or extinguishes the right.

Recommendation 23: Conflicts of Law

At present, Ontario's limitation law is characterized as procedural, particularly because it extinguishes only remedies, and not rights. This creates problems where a claim which arose in Ontario is litigated elsewhere, because the extra-provincial tribunal will apply the Ontario law regarding liability but its own law regarding limitations. Among other things, this encourages Ontario litigants to go "forum shopping", looking for a jurisdiction that has longer limitation periods than Ontario. This could be a serious problem if Ontario is the first province to implement a single limitation period.

Conversely, if the other jurisdiction has not fully adopted the discovery principle, Ontario plaintiffs who are compelled to appear before an extra-provincial tribunal could find that their claim is barred.

Classifying Ontario's limitations law as substantive does mean that in foreign causes of action tried in Ontario, Ontario limitations law would not apply. This would have the effect of denying some foreign litigants the advantages of Ontario's law, but that is a compromise that must be made in the interests of mutuality between Ontario and other jurisdictions.

This approach was recommended by the Ontario Law Reform Commission: see also Bill 160, s.19.

24. The limitation of actions that are provided under an Act, other than the proposed new Act, are those set out in the Schedule to the proposed new Act, and any limitation of action that is provided by or under an Act other than the proposed new Act and not set out in the Schedule is of no effect.

Recommendation 24: Schedule of Limitation Periods

One of the most common complaints about limitations law is that the limitation provisions are scattered through dozens of specific statutes. Some do not even appear in the official revised consolidations.

Although the proposal to adopt a single two year limitation period should eliminate most of the problems, there will be a few exceptions. Also, it is important to establish the principles of the new scheme as the basis of limitations policy in Ontario. Therefore, it is recommended that no limitation of action provided in another act have any force or effect unless it is set out in a schedule to the new Limitations Act. See Bill 160, s.4(2).

25. **Pending a comprehensive study of Part I of the present Limitations Act, the relevant corresponding provisions of Bill 160 should be reviewed as a possible first phase of real property limitation reform.**

Recommendation 25: Actions relating to land and charges on property.

Part I of the Limitations Act deals primarily with limitation periods in respect of actions to recover land and actions relating to charges on land. It contains different categories of limitation periods and does not recognize the discovery principle. Many special rules are provided for determining when the limitation period starts to run. Part I provides the basis for adverse possession of land.

Despite the expertise of the Real Property Registration Branch of the Ministry of Consumer and Commercial Relations, the rest of the Consultation Group felt that it did not have the background necessary to determine whether complex or technical issues raised by Part I could be sufficiently addressed by the proposed new scheme. Although the Ontario Law Reform Commission made some proposals for reform, most of which were incorporated in Bill 160, there has not been a comprehensive study of the appropriate role of adverse possession in determining title to land.

While recognizing the need for further review of Part I, the Consultation Group was very concerned that any such review not delay progress on implementation of the rest of the reforms. Accordingly, despite the inconsistencies that might exist between the principles of Part I (for example, limitation periods of different lengths, no discovery principle, extinguishment of rights after 10 years, postponement in cases of disability) the Consultation Group considered that pending the complete review of Part I, it would be preferable to include as much of Part I as necessary and appropriate in the new legislation rather than continuing Part I unamended. To the extent that Bill 160 represents a modern restatement of Part I while implementing the reforms recommended by the Ontario Law Reform Commission, then, instead of preserving the archaic language and many concepts that are outmoded in Part I, the relevant provisions of Bill 160, supplemented where possible by the general recommendations, might be appropriate for inclusion in the new statute as the first phase of reform of real property limitations. Further attempts ought to be made to involve the Real Property Section of the CBAO and others interested in real property issues in the review of Bill 160.

The major source of concern about the proposals in Bill 160 was the provision to abolish prescriptive easements. If these concerns have not been adequately met by the Easement Statute Law Amendment Act, 1989 it may be necessary to continue to allow for prescriptive easements.

26. **The Crown should be bound by any new limitations scheme (Recommendation of non-government members).**

Recommendation 26: Applicability to Crown

All modern reform of limitations law assumes that the Crown will be bound by the general limitation legislation. Bill 160 would have bound the Crown and the most recent Ontario Law Reform Commission Report on Liability of the Crown again recommends that the Crown ought to be subject to limitations law on the same basis as other litigants. However, since this policy raises questions about the extent to which the Crown is responsible for performing unique public duties and therefore has consequences for the government far beyond limitations law, it would have been difficult for public servant members of the group to represent the views of the government on this issue; therefore, they took no position on this recommendation.

27. **(1) The new legislation should apply to an act or omission that occurs before the legislation comes into force if the limitation period that would otherwise apply has not expired.**

(2) Where application of the new limitation period to an act or omission that occurs before the new legislation comes into force would shorten the limitation period that would otherwise apply, the limitation period for that claim should be the shorter of,

(a) the remainder of the limitation period that would otherwise have applied; and

(b) two years from the coming into force of the new legislation.

(3) Despite paragraph (1), new legislation should apply to all actions to which Rec. 2(g) (sexual assault) and Rec. 10 (non-sexual assault and sexual assault by a "stranger") apply.

Recommendation 27: Transition

There is often uncertainty about how amendments to limitations statutes apply to causes of actions arising before the amendments come into effect. If the courts were to find that the amendments did not apply where the cause of action had already accrued, that would mean that a cause of action that arose before the new statute might be governed for a further 10 or 20 years by the old law. In the year 2000 it would still be necessary to refer to the 1980 Limitations Act. Accordingly, to achieve the benefits of the new legislation as soon as possible, it is provided that if a limitation period under the old Act had not expired, then the new scheme ought to apply. In some cases this approach will have the effect of lengthening a limitation period. For a claim that was subject to a six month limitation period that would have expired the day after the new Act, the limitation period would be extended a further 18 months, since under the new Act the basic limitation period would be two years.

In other cases the new scheme would have the effect of shortening the old limitation period. In these cases, the relevant new limitation period will be two years from the date of the new scheme, unless the old limitation period would have expired in any event before two years. Consider the case where a six year limitation period is reduced to two years. If on the effective date of the new legislation five years were left to run, under the new scheme it would be reduced to two years. But if the limitation period had started five years earlier so that only one year were left to run, the relevant period would still be only one year.

Presumably, whether or not claims undiscovered on the effective date of the new scheme had expired would be determined under the law applicable before the coming into effect of the new scheme.

27(3) Assault and Sexual Assault

While there is a presumption against enacting legislation that applies retroactively, it is far from an absolute rule. Retroactive legislation is warranted where it is necessary to remedy previous injustices. In the opinion of the Consultation Group retroactive application of the legislation is clearly called for in the case of actions arising from assault and sexual assault. A major goal of the proposed reforms is to remove as many obstacles as possible from the attempts by victims to seek civil redress for assault or sexual assault. To limit this relief only to those victims for whom an old limitation period is still in effect on the date of the new statute would be to ignore the needs of the countless victims whose cause of action had been barred by the rigid rules of the old law. In effect, no one over 22 years of age would be able to bring an action.

While this does mean that extinguished causes of action could be revived, it was a feature of the old law that rights were not extinguished by the expiry of a limitation period. Consequently, the victim always retained his or her right against the defendant. This recommendation provides new access to a remedy to pursue that right.

CONSEQUENTIAL AMENDMENTS

1. **Subject to Rec. 9, ("incapability", minority) a claim shall not be brought after the expiry of 10 years from the act or omission when the claim is in respect of,**

   (a) professional services provided by a hospital or hospital employee; or

   (b) professional services by a member of a college of health professionals, except where the claim is in respect of a "retained object".

Consequential Amendment 1: Health Professionals and Hospitals

The amendment, based on Rec. 15, should be made in the relevant specific legislation governing health professionals and hospitals.

These specific limitation periods would then be referred to in the schedule to the new Act.

2. **Subject to Rec. 9, ("incapability", minority) a claim shall not be brought after the expiry of 10 years from the substantial performance of the contract of any improvement to real property where the claim is in respect of any deficiency in the design, planning, general review, supervision or construction of any improvement to real property.**

Consequential Amendment 2: Design Professionals

While latent building defects are particular problems for plaintiffs, design professionals (architects, professional engineers) and builders have special problems which seem to merit a short ultimate period of 10 years.

At the same time there is a further particular problem. Construction of a major building is a long and complicated process involving dozens and dozens of different entities performing work at different times. If the building falls down, it will be impossible for the plaintiff to determine when the wrongful act or omission took place. Fortunately, industry practice has developed the concept of "substantial performance" as a reference point for many building related purposes. Furthermore, this concept is used throughout North America. Therefore, it seems justifiable to use generally the date of substantial performance as the date when the ultimate limitation period begins to run.

The use of the term "improvement" is based oh that concept in the Construction Lien Act.

The only difficulty that might arise with this recommendation is that a design professional may find that the design which was done, say in 1990, is not used until 1998. As a result, the design professional is exposed to liability 8 years longer than the builder is. Moreover, the longer the delay in utilizing the plans, the greater the likelihood that the design will become inappropriate through changing standards. Accordingly, if problems emerge, consideration could be given to creating a further exception within the building industry by establishing a limitation period for design professionals that runs from act or omission to an appropriate point in excess of 10 years that would reflect a reasonable period between completion of the design and completion of construction. In some American states, the ultimate limitation period is ten years from completion of the construction or twelve years from the date of completion of the design if the construction is not completed earlier.

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ATTORNEY GENERAL RELEASES DRAFT PROPOSALS FOR NEW LIMITATIONS ACT

JUNE 27, 1991

TORONTO -- Attorney General Howard Hampton today released for public discussion a draft bill to remove limitation periods in cases of sexual assault and to introduce a single limitation period of two years for most other civil proceedings.

The draft Limitations Bill replaces dozens of archaic and unjust limitation periods with a fair and more equitable period which would not begin until the plaintiff has sufficient knowledge to commence legal proceedings.

The consultation draft proposes that there be no limitation period whatsoever where a sexual assault has taken place in a relationship of trust or dependency, such as incidents involving parents and guardians. In cases of other sexual assaults and non-sexual assaults in a relationship of intimacy and dependency, a limitation period would apply only if the defendant could prove that the victim had not been rendered incapable.

"While there are many pressing and legitimate reasons for limitations reform, none is more urgent than the need to remove the barriers to justice for victims of sexual assault," said Mr. Hampton. "In far too many cases, the limitation period expires before victims are able to appreciate what has happened to them or are able to confront the assailant and begin legal proceedings."

Reform of the Limitations Act is based on recommendations from a consultation group established by the Ministry of the Attorney General in December, 1989, and presented to Mr. Hampton this past April. It responded to diverse concerns ranging from the plight of incest victims whose claims were prematurely barred, to architects and engineers who were exposed to indefinite professional liability.

Other highlights of the draft bill include:

- no limitation period will run against a person who is still a minor, unless the court has appointed a litigation guardian

- no limitation period will run against a person while he or she is incapable of commencing a proceeding due to physical, mental or psychological condition unless the court has appointed a litigation guardian

- a 10-year ultimate limit for exceptional cases such as those involving medical negligence and building deficiencies, to allow for changing professional standards, the effect of liability on the cost of maintaining insurance and maintaining records, and rapid deterioration of evidence

- an ultimate time limit of 30 years, even if the victim/plaintiff has not discovered the injury or damage

Reform of limitation provisions that apply to land and mortgages will be dealt with in the second phase of limitations reform.

Under the consultation draft proposals, legal proceedings, in cases of environmental damage, could be barred after 30 years if the harm was not discovered; however, he added that more study in this area of law is needed.

"We will be seeking public consultation on our draft proposals during the summer to assess the need for and direction of reform," said the Attorney General. "It is our intention to return to the Legislature this fall with a bill that will promote and protect the interests of all parties engaged in civil litigation while improving accessibility to the justice system."

- 30 -

CONTACTS:

Rosemary Hnatiuk Minister's Office (416) 326-4000	Communications Branch (416) 326-2200

Ce document est aussi disponible en français.

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STATEMENT BY

THE HONOURABLE HOWARD HAMPTON
ATTORNEY GENERAL

ON RELEASE OF THE

CONSULTATION DRAFT
ON THE
PROPOSED LIMITATIONS ACT.

JUNE 27, 1991

MR. SPEAKER:

I AM PLEASED TO ANNOUNCE TODAY THAT I AM RELEASING A CONSULTATION DRAFT OF A PROPOSED NEW LIMITATIONS ACT. IT IS MY INTENTION TO ENGAGE IN ACTIVE PUBLIC CONSULTATION ABOUT THESE PROPOSALS OVER THE SUMMER AND TO RETURN TO THE ASSEMBLY WITH A BILL THAT WILL PROMOTE AND PROTECT THE INTERESTS OF ALL PARTIES ENGAGED IN CIVIL LITIGATION.

LIMITATIONS LAW AFFECTS VIRTUALLY EVERY CIVIL PROCEEDING COMMENCED IN OUR COURTS. HOWEVER, MUCH OF THAT LAW IS THREE CENTURIES OLD. IN RECENT YEARS THERE HAVE BEEN NUMEROUS PROPOSALS FOR REFORM. JUST WEEKS AGO THE ONTARIO COURT OF APPEAL EXPRESSED STRONG CONCERN ABOUT THE "CONFUSION, UNCERTAINTY AND INJUSTICE ARISING FROM THE PRESENT LIMITATIONS ACT AND THE LIMITATION PROVISIONS IN OTHER STATUTES" AND CALLED FOR "URGENT" REVIEW AND REVISION.

THE PROPOSALS AND THE DISCUSSION DRAFT REFLECT THE RECOMMENDATION OF THE ATTORNEY GENERAL'S LIMITATIONS ACT CONSULTATION GROUP WHICH WAS ESTABLISHED IN DECEMBER, 1989, AND WHICH PRESENTED ITS REPORT TO ME IN APRIL.

THE DRAFT BILL IS DESIGNED TO ACHIEVE A NEW, MODERN BALANCE BETWEEN THE COMPETING RIGHTS OF PLAINTIFFS AND DEFENDANTS. ACCESS TO JUSTICE IS ENHANCED FOR PLAINTIFFS BY ENSURING THAT, AS A GENERAL RULE, THEIR CLAIMS ARE NOT BARRED BEFORE THEY HAVE KNOWLEDGE OF THEM. ESTABLISHING AN ULTIMATE LIMITATION PERIOD AFTER WHICH MOST CLAIMS CANNOT BE BROUGHT RECOGNIZES THE DEFENDANT'S NEED FOR CERTAINTY, WHICH IS THE FUNDAMENTAL PURPOSE OF LIMITATIONS LAW.

WE PROPOSE TO REPLACE DOZENS OF ARCHAIC, CONFUSING AND UNJUST LIMITATION PERIODS WITH A SINGLE LIMITATION PERIOD OF TWO YEARS THAT WOULD NOT BEGIN UNTIL THE PLAINTIFF HAD SUFFICIENT KNOWLEDGE TO COMMENCE PROCEEDINGS. ONLY IF A PARTY DID NOT DISCOVER A CLAIM UNTIL AFTER 30 YEARS MIGHT THE CLAIM BE FINALLY BARRED. A SHORTER PERIOD OF TEN YEARS COULD APPLY IN THE CASE OF MEDICAL NEGLIGENCE OR BUILDING DEFICIENCIES.

WHILE THERE ARE MANY PRESSING AND LEGITIMATE REASONS FOR LIMITATIONS REFORM, NONE IS MORE URGENT THAN THE NEED TO REMOVE THE BARRIERS TO JUSTICE FOR SEXUAL ASSAULT VICTIMS. IN FAR TOO MANY CASES THE LIMITATION PERIOD EXPIRES BEFORE THE VICTIM RECOVERS SUFFICIENTLY FROM THE TRAUMA OF A SEXUAL ASSAULT TO BE ABLE TO COPE WITH LEGAL PROCEEDINGS.

WE PROPOSE THAT THERE BE NO LIMITATION PERIOD WHATSOEVER WHERE A SEXUAL ASSAULT HAS TAKEN PLACE IN A RELATIONSHIP OF TRUST OR DEPENDENCY. IN OTHER TYPES OF SEXUAL ASSAULT, OR ASSAULT IN A RELATIONSHIP OF INTIMACY OR DEPENDENCY THERE WOULD STILL BE A LIMITATION PERIOD, BUT THE VICTIM COULD BE PRESUMED TO BE INCAPABLE OF COMMENCING THE PROCEEDINGS. THUS, IN ORDER TO BAR THE CLAIM, THE DEFENDANT WOULD HAVE TO SHOW THAT THE VICTIM HAD, FOR AT LEAST TWO YEARS, BEEN CAPABLE OF COMMENCING THE PROCEEDINGS.

LIMITATION PERIODS WOULD GENERALLY NOT RUN AGAINST PERSONS UNDER THE AGE OF 18 YEARS OR PERSONS WHO ARE INCAPABLE OF COMMENCING LEGAL PROCEEDINGS.

ANOTHER CONCERN IS THE IMPACT OF LIMITATION PERIODS IN CASES OF ENVIRONMENTAL HARM. UNDER THE CONSULTATION DRAFT PROPOSALS, LEGAL PROCEEDINGS COULD BE BARRED AFTER 30 YEARS. HOWEVER, WE RECOGNIZE THAT THAT ISSUE WILL BENEFIT FROM FULLER PUBLIC DISCUSSION.

AT THIS TIME I WOULD LIKE TO THANK THE LIMITATIONS ACT CONSULTATION GROUP, WHOSE MEMBERSHIP INCLUDED REPRESENTATIVES OF THE ONTARIO WOMEN'S DIRECTORATE, THE CANADIAN BAR ASSOCIATION, PERSONS WITH DISABILITIES, BUILDING DESIGNERS AND CONTRACTORS, HOSPITALS, DOCTORS AND MUNICIPALITIES.

THIS DRAFT BILL IS THE PRODUCT OF ITS CAREFUL DELIBERATIONS. NOW, HOWEVER, I INVITE THE MEMBERS OF THE ASSEMBLY AND ALL CONCERNED CITIZENS THROUGHOUT THE PROVINCE TO COMMENT ON THE CONSULTATION DRAFT AND TO ASSIST THE GOVERNMENT IN DETERMINING THE DIRECTION OF LIMITATIONS REFORM.

WHETHER YOU SUPPORT THE PROPOSAL, OR HAVE CONCERNS, IT IS EQUALLY IMPORTANT THAT I HAVE YOUR VIEWS.

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CONSULTATION DRAFT OF THE PROPOSED GENERAL LIMITATIONS ACT

ighlights of the Proposals

- The Consultation Draft replaces the dozens of limitation periods for different causes of action with a single limitation period of two years (unless the limitation period is listed in a special Schedule).

- However, the two year period starts to run only when the plaintiff knew or ought to have known the material facts on which the claim is based. In other words, the limitation period generally cannot expire before the plaintiff is aware that a wrong has occurred.

- At the same time, the primary purpose of any statute of limitations is to put an end to the possibility of litigation. Accordingly, the Consultation Draft provides that no claim may be brought after 30 years, even though the plaintiff has not discovered the injury or damage.

- In some circumstances, the public interest may still be served by an ultimate limitation period as short as ten years.

  A ten year period may be justified where,

  (a) it is unlikely that claims will arise after ten years,

  (b) the activity is subject to continuing changes in standards of care and rapid deterioration of evidence,

  (c) there are serious problems in maintaining insurance in excess of ten years,

  (d) there are serious problems in retaining records in excess of ten years.

  Hospitals, health professionals, and building designers and contractors may well meet these criteria. Others may be identified in the consultation process.

- These basic principles will apply in the vast majority of cases. There are, however, several important modifications.

- No limitation period will run against a person who is still a minor, unless the court has appointed a litigation guardian.

- No limitation period will run against a person while he or she is incapable of commencing a proceeding because of a physical, mental or psychological condition, unless the court has appointed a litigation guardian.

- There will be no limitation period whatsoever on claims arising from a sexual assault that took place in a relationship of trust or dependency.
- In cases of other sexual assaults and non-sexual assaults in a relationship of intimacy or dependency, there would still be a limitation period, but the victim would be presumed to be incapable of commencing the proceedings. Thus, in order to bar the claim the defendant would have to show that the victim had, for at least two years, been capable of commencing the proceedings.
- The provisions regarding assault and sexual assault would apply even if the conduct had occurred in the past and the applicable limitation period had expired.
- Any limitation period in another Act that is to have effect must be listed in the Schedule to this Act.
- The draft Act does not apply to some types of proceedings, such as proceedings before administrative agencies, provincial offence proceedings, appeals, or proceedings in respect to real property matters.

Reform of limitation periods that apply to real property and to charges on land will be dealt with in the second phase of limitations reform. Proposals for reform are welcome.

The applicability of limitation periods in cases of environmental harm requires fuller public discussion.

Ce document est aussi disponible en français.

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Ontario

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June 1991

Limitations law affects virtually every civil proceeding commenced in our courts. However, much of that law is three centuries old. In recent years there have been numerous proposals for reform. Just weeks ago the Ontario Court of Appeal expressed strong concern about the "confusion, uncertainty and injustice arising from the present Limitations Act and the limitation provisions in other statutes" and called for "urgent" review and revision.

I am enclosing for your consideration a Consultation Draft Act based on recommendations I received earlier this year from a Consultation Group that was established in 1989 to make proposals for a new Limitations Act.

The Consultation Draft Act is designed to achieve a new, modern balance between the competing rights of plaintiffs and defendants. While there are many pressing and legitimate reasons for limitations reform, none is more urgent than the need to remove the barriers to justice for sexual assault victims. I believe our proposals are essential to remedying very grave past injustices.

Through the Consultation Draft Act, access to justice is enhanced for plaintiffs by ensuring that, as a general rule, their claims are not barred before they have knowledge of them.

Establishing an ultimate limitation period after which most claims cannot be brought recognizes the defendant's need for certainty, which is the fundamental purpose of limitations law.

I invite your comments on the Consultation Draft to assist the government in determining the direction of limitations reform. Whether you support the proposal or have concerns, it is equally important that I have your views.

Comments should be provided by 30 September, 1991 to:

Limitations Act Consultation
c/o Policy Development Division
Ministry of the Attorney General
7th floor
720 Bay Street
Toronto, Ontario
M5G 2K1

Information about the recommendations prepared by the Consultation Group may also be obtained from the above address.

HOWARD HAMPTON
Attorney General

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CONSULTATION DRAFT OF THE PROPOSED GENERAL LIMITATIONS ACT

Guide to the Consultation Draft

NOTE: This Guide is to be read along with the Draft.

S.1 - Definition of Claim

The term "claim" replaces "cause of action" to indicate that there is a new approach to limitations law.

Also, it limits the scope of the Act to proceedings for relief after an injury has been caused.

"Injury" is used in its general sense of any wrong.

S.2 - Application

The Act applies only to proceedings in a court. It does not apply to proceedings before administrative agencies.

(a) The present limitations provisions for real property matters will be preserved and re-named the Real Property Proceedings Limitations Act. Reform of limitations law as it relates to real property matters and charges on land will be dealt with in a second phase of limitations reform. In the meantime, proposals for reform are welcome.

(b) The Act does not apply to proceedings in the nature of an appeal or review since such proceedings are taken within the context of a process that has already been commenced in a timely manner.

(c) The Act does not apply to proceedings in respect of provincial offences.

S.3 - Crown Bound

The Crown will be subject to the same provisions as other litigants. (But see s.25 r.6) concerning debts owing to the Crown).

S.4 - Basic Limitation Period

There are no longer different categories of causes of action subject to limitation periods of different lengths. Any proceedings to which the Act applies must be commenced within two years of the date on which the claim is discovered. Thus, the Act incorporates the general rule adopted by the Supreme Court of Canada in Central Trust v. Rafuse, [1986] 2 S.C.R. 147, that the limitation period does not begin until the material facts have been discovered or ought to have been discovered.

Where the proceeding is brought more than two years after the act or omission the person having the claim will have the burden of showing that discovery did not take place at the time of the act or omission.

S.5 - Discovery

(1)(a) The elements of knowledge constituting discovery are set out. Element (iv) suggests that more than knowledge of the possibility of a claim is necessary to commence the limitation period. It must also be appropriate to seek a legal remedy for the injury.

(1)(b) The claimant will be deemed to have the knowledge of a reasonable person in the claimant's circumstances.

S.6 - Minors

A limitation period does not run against a person under 18 years unless the court has appointed a litigation guardian pursuant to S.8.

S.7 - Incapable Persons

(1) This provision replaces the narrow and out-dated status of mental incompetency with the modern concept that an individual may be capable with respect to some aspects of his or her affairs but incapable with respect to others.

(3) This provision ensures that a limitation period does not expire the day after the claimant recovers from a lengthy period of incapability.

S.8,9 - Litigation Guardian

A potential defendant can start the limitation period running against a minor or incapable person only by applying to the court to have a litigation guardian specifically appointed. This will require an amendment to the Rules of Civil Procedure.

S.10, s.18(h) - Sexual Assaults and Non-Sexual Assaults

s.10

Because of the trauma that can be induced by a sexual assault or, in certain cases, a non-sexual assault, claimants will often be unable to commence legal proceedings within two years of the act. Accordingly, victims of sexual assault and of assault in an intimate or dependent relationship are presumed incapable of commencing proceedings. In order to have the victim's claim barred, the defendant would have to show that the victim had been capable of bringing the claim two years before the proceedings were actually begun.

S.18(h) Sexual Assault

Victims of sexual assault in a relationship of trust or dependency are uniquely incapable of commencing legal proceedings quickly. To impose a limitation period on actions for sexual assault in these circumstances is to deny relief to those victims who have been most seriously traumatized and silenced by their assailants.

This is consistent with criminal law policy where there is no limitation period for criminal prosecution of sexual assault.

S.11 - Attempted Resolution

Where the parties have agreed to an alternative dispute resolution process, it will not be necessary for the claimant to commence proceedings solely in order to prevent the limitation period from expiring.

S.12, 13 - Principals/Successors/Personal Representatives

Where there is a principal/agent relationship, discovery by the agent is deemed discovery by the principal if the agent was under a duty to communicate the knowledge to the principal.

Discovery or deemed discovery by a predecessor in right, title or interest is imputed to a successor claimant.

S.14 - Deceased Persons

This provision ensures that a personal representative will have at least one year after the death of the deceased to commence proceedings.

S.15 - Acknowledgements

This section reforms and extends the diverse rules in Part I of the present Act whereby acknowledgement or part payment within the limitation period will start the period running anew.

S.16 - Notice of Possible Claim

Because commencement of the limitation period is dependent on the claimant's state of knowledge there may be circumstances in which the defendant, in order to have the liability determined quickly, wishes the limitation period to begin. This provision will assist the defendant in establishing the date at which the claimant acquired certain knowledge.

(4) A notice of claim may not be served on a minor or a person who is incapable as determined under s.7. The defendant would have to apply under s.8 for the appointment of a litigation guardian.

S.17 - Ultimate Limitation Period

A claim will be barred 30 years after the act or omission even though the claimant has not discovered the material facts.

(3) - Exceptions

The 30 year ultimate bar will not apply where the claimant is incapable (s.7, s.10) or where the person against whom the claim is made has wilfully concealed or misrepresented the material facts upon which the claim is based.

(4) - Purchasers for Value

This provision protects a good faith purchaser against a claim by an owner who does not discover the purchaser until two years after the conversion. (The owner could still sue the person who converted the property.)

(5)-(7) - Health Facilities and Health Practitioners

The Consent to Treatment Act, 1991 (Bill 109), which defines "health practitioner" received second reading on June 20, 1991.

(8) - Building Designers and Contractors

The ten year period runs from the date of substantial performance. This is an accepted industry-wide standard for measuring time.

(9) - Exceptions

The ten year ultimate limitation period will not run against a minor or a person incapable of commencing a claim or in the case of concealment or misrepresentation.

(11)(a),(b) - Continuing Causes of Action

Where there has been a continuing wrong or series of related acts or omissions, the ultimate limitation period runs from the last act or omission. Otherwise, a claim in respect of an ongoing wrong could be barred even though the wrong continued up to the day the 30 year period expired.

(11)(c) - Demand Obligations

In the absence of a specific provision, a claim for a debt due on demand traditionally arises when the loan was created, not when the demand for payment was made.

(12) - Extinguishment

After expiry of the ultimate limitation period, not only will the remedy be barred, but also the rights on which it is based will be extinguished.

S.18 - Proceedings Without Limitation Periods

(a) Judicial Review

Invalid administrative acts generally should not be validated by the passage of time.

(b) Declarations

Declarations do not in themselves grant a remedy and therefore need not be barred.

(c),(d),(e) - Orders, Arbitration Awards

The continuing validity of an order, having been obtained in a timely manner, should not as a matter of substantive law be subject to further time limitations. The Rules of Civil Procedure will continue to deal with the procedural requirements for enforcing court orders.

Support provisions in a domestic contract registered under the Family Law Act, 1986, s.35 are deemed in that Act to be court orders for the purpose of enforcement.

(f),(g) Debtors or Creditors in Possession

The rules which apply to mortgagors and mortgagees in certain circumstances are extended to personal property.

(h) Sexual Assault: See comments on s.10

S.19 - Contribution and Indemnity

This replaces s.9 of the Negligence Act. In contribution claims time will start to run when the person seeking contribution is made a defendant to the claim in respect of which the person seeks contribution.

S.20 - Limitation Periods in Other Acts

Any other limitation periods valid and effective under Ontario law will be listed in this Act. Any newly-created limitation period would have to be added to the Schedule.

S.21 - Amendment of Pleadings

The adoption of the discovery rule should render unnecessary the practice of amending pleadings to add parties and claims as a means of avoiding the expiry of a limitation period.

S.22 - Agreements

Agreements between parties to vary the length of a limitation period are not invalid in themselves. The courts will retain the power to scrutinize agreements to ensure that they comply with the general law of contract, for example, in relation to unconscionability, duress, and protection of public policy.

S.23 - Notice of Claim

At present, failure to comply with a requirement to give a notice of claim within a certain time can operate as a limitation period within a limitation period and bar the claim. Failure to give notice will bar a claim only where a defendant can show prejudice as a result of the failure of the claimant to give the notice.

S.24 - Conflicts of Law

The effect of this provision is that Ontario limitations law should apply to Ontario-based claims litigated in another jurisdiction. In claims arising in other jurisdictions, Ontario would apply the limitations law of that jurisdiction to claims litigated here.

S.25 - Transition Rules

Rules are laid down for acts or omissions that occurred before the new Act comes into force. Generally speaking, a former limitation period of less than two years that had not expired will be extended to a maximum of two years; a former limitation period longer than two years will be reduced to the shorter of two years or the unexpired portion of the limitation period.

For debts owing to the Crown there will be a maximum of six years to collect debts outstanding on the transition date.

Sexual Assault

The provisions of the new Act in relation to assault and sexual assault will apply to acts that took place before the new Act even if the former limitation period had expired. Insofar as the new provisions are intended to remedy the injustices of the former law, it is necessary to ensure that victims of past assaults and sexual assaults will have access to the benefits of the new Act.

S.26 - Removal of Special Limitation Periods

More than 50 special limitation periods are repealed.

S.27 - Real Property and Charges on Land

See comments on s.2.

SS.28 - 35 - Consequential Amendments

Schedule

The schedule sets out those special limitation periods that will remain in effect in accordance with s.20 of the Act.

It refers only to Acts in force as of June 1, 1991.

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Ontario

A Consultation Draft of the General Limitations Act

proposed by the
Ministry of the
Attorney General

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Avant-projet de la Loi sur la prescription générale, en vue d'une consultation

proposé par le
ministère du
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Consultation Draft
General Limitations Act

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Annexe

Definition

1. In this Act, "claim" means a claim to remedy an injury, loss or damage that occurred as a result of an act or omission.

APPLICATION

Application

2. This Act applies to claims pursued in a court proceeding other than,

(a) a proceeding to which the *Real Property Proceedings Limitations Act* applies;

(b) a proceeding in the nature of an appeal or review if the time for commencing the proceeding is governed by an Act or rule of court; and

(c) a proceeding to which the *Provincial Offences Act* applies.

Crown

3. This Act binds the Crown.

BASIC LIMITATION PERIOD

Basic limitation period

4. Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the expiry of two years from the day on which the claim was discovered.

Discovery

5.—(1) A claim is discovered on the earlier of,

(a) the day on which the person with the claim first knew,

(i) that injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss or damage, it would be appropriate to commence a proceeding in order to remedy the injury, loss or damage; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

Presumption

(2) A person with a claim shall be presumed to have known of the matters referred

---

Définition

1 Dans la présente loi, «demande en justice» s'entend d'une demande en justice pour obtenir réparation de préjudices, de pertes ou de dommages survenus par suite d'un acte ou d'une omission.

CHAMP D'APPLICATION

Champ d'application

2 La présente loi s'applique aux demandes en justice formées dans une instance judiciaire qui n'est :

a) ni une instance à laquelle s'applique la loi intitulée *Real Property Proceedings Limitations Act* (*«Loi sur la prescription des instances portant sur les biens immeubles»*);

b) ni une instance telle qu'un appel ou une révision, si le délai d'introduction de l'instance est régi par une loi ou une règle de pratique;

c) ni une instance à laquelle s'applique la loi intitulée *Provincial Offences Act* (*«Loi sur les infractions provinciales»*).

Couronne liée

3 La présente loi lie la Couronne.

DÉLAI DE PRESCRIPTION DE BASE

Délai de prescription de base

4 Sauf disposition contraire de la présente loi, l'instance relative à une demande en justice se prescrit par deux ans à compter du jour où sont découverts les faits qui ont donné naissance à la demande en justice.

Découverte des faits

5 (1) Les faits qui ont donné naissance à la demande en justice sont découverts le jour qui, des jours suivants, est antérieur à l'autre :

a) le jour où l'auteur de la demande en justice a appris les faits suivants :

(i) des préjudices, des pertes ou des dommages sont survenus,

(ii) les préjudices, les pertes ou les dommages ont été causés ou causés en partie par un acte ou une omission,

(iii) l'acte ou l'omission est le fait de la personne contre laquelle est faite la demande en justice,

(iv) étant donné la nature des préjudices, des pertes ou des dommages, il serait approprié d'introduire une instance afin d'obtenir réparation des préjudices, des pertes ou des dommages subis;

b) le jour où toute personne raisonnable possédant les mêmes capacités et se trouvant dans la même situation que l'auteur de la demande en justice aurait dû apprendre les faits visés à l'alinéa a).

Présomption

(2) À moins de preuve du contraire, l'auteur d'une demande en justice est présumé

to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved.

Minors

6. The limitation period established by section 4 does not run during any time in which the person with the claim was a minor and was not represented by a court-appointed litigation guardian.

Incapable persons

7.—(1) The limitation period established by section 4 does not run during any time in which the person with the claim,

(a) was incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition or because of physical restraint, war or war-like conditions; and

(b) was not represented by a court-appointed litigation guardian.

Presumption

(2) A person shall be presumed to have been capable of commencing a proceeding in respect of a claim at all times unless the contrary is proved.

Extension

(3) If the running of a limitation period is postponed or suspended under this section and the period has less than six months to run when the postponement or suspension ends, the period is extended so as not to end before the expiry of six months after the day on which the postponement or suspension ended.

Exception

(4) This section does not apply in respect of a claim referred to in section 10.

Litigation guardians

8. If a person is represented by a court-appointed litigation guardian, section 5 applies as if the litigation guardian were the person with the claim.

Appointment

9. If the running of a limitation period in respect of a claim is postponed or suspended under section 6 or 7, any person may move to have a litigation guardian appointed for the person with the claim.

Assaults and sexual assaults

10.—(1) The limitation period established by section 4 does not run in respect of a claim based on assault or sexual assault during any time in which the person with the claim was incapable of commencing a proceeding because of his or her physical, mental or psychological condition.

Presumption

(2) Unless the contrary is proved, a person with a claim based on an assault shall be presumed to have been incapable of com-

avoir appris les faits visés à l'alinéa (1) a) le jour où a eu lieu l'acte ou l'omission qui a donné naissance à la demande en justice.

Mineurs

6 Le délai de prescription fixé à l'article 4 ne court pas pendant toute période au cours de laquelle l'auteur de la demande en justice était mineur et n'était pas représenté par un tuteur à l'instance nommé par le tribunal.

Incapacité

7 (1) Le délai de prescription fixé à l'article 4 ne court pas pendant toute période au cours de laquelle l'auteur de la demande en justice :

a) d'une part, était dans l'incapacité d'introduire une instance à l'égard de la demande en justice en raison de son état physique, mental ou psychologique, ou en raison d'un empêchement physique, d'un état de guerre ou de conditions analogues à l'état de guerre;

b) d'autre part, n'était pas représenté par un tuteur à l'instance nommé par le tribunal.

Présomption

(2) À moins de preuve du contraire, une personne est présumée avoir été en tout temps capable d'introduire une instance à l'égard d'une demande en justice.

Prorogation ou suspension du délai

(3) Si la prescription est reportée ou suspendue aux termes du présent article et qu'il reste moins de six mois à courir sur le délai au moment où cesse le report ou la suspension, le délai est prorogé de façon à ne pas prendre fin avant l'expiration des six mois suivant le jour où a cessé le report ou la suspension.

Exception

(4) Le présent article ne s'applique pas aux demandes en justice visées à l'article 10.

Tuteurs à l'instance

8 Si une personne est représentée par un tuteur à l'instance nommé par le tribunal, l'article 5 s'applique comme si le tuteur à l'instance était l'auteur de la demande en justice.

Nomination

9 Si la prescription est reportée ou suspendue aux termes de l'article 6 ou 7, quiconque peut demander, par voie de motion, que soit nommé un tuteur à l'instance pour représenter l'auteur de la demande en justice.

Voies de fait et agressions sexuelles

10 (1) Le délai de prescription fixé à l'article 4 ne court pas dans le cas d'une demande en justice fondée sur des voies de fait ou une agression sexuelle pendant toute période au cours de laquelle l'auteur de la demande en justice était dans l'incapacité d'introduire une instance en raison de son état physique, mental ou psychologique.

Présomption

(2) À moins de preuve du contraire, l'auteur d'une demande en justice fondée sur des voies de fait est présumé avoir été dans l'in-

mencing a proceeding earlier than it was commenced if at the time of the assault one of the parties to the assault was living with the person in an intimate relationship or was someone on whom the person was dependent, whether or not financially.

Idem

(3) Unless the contrary is proved, a person with a claim based on a sexual assault shall be presumed to have been incapable of commencing a proceeding earlier than it was commenced.

Attempted resolution

11. If a person with a claim and a person against whom the claim is made have agreed to submit the claim to an independent third party for resolution, the limitation period established by section 4 does not run while both parties are awaiting its resolution.

Principals

12. For the purpose of clause 5 (1) (a), in the case of a proceeding commenced by a principal, if the principal's agent knew of the matters referred to in that clause before the principal knew of them and was under a duty to communicate the knowledge to the principal, the principal shall be deemed to have acquired the knowledge on the day that the agent first knew of them.

Successors

13.—(1) For the purpose of clause 5 (1) (a), in the case of a proceeding commenced by a person claiming through a predecessor in right, title or interest, if the predecessor knew or ought to have known of the matters referred to in that clause before the person claiming knew of them, the person claiming shall be deemed to have acquired the knowledge on the day that the predecessor first knew or ought to have known of them.

Idem

(2) A predecessor shall be considered to have first ought to have known of the matters referred to in clause 5 (1) (a) on the day a reasonable person in the predecessor's circumstances and with the predecessor's abilities first ought to have known of them.

Personal representative

(3) For the purpose of this section, a deceased person who had a claim is a predecessor of his or her personal representative.

Deceased persons

14. If a person with a claim dies and the limitation period established by section 4 would expire within one year of the person's death, the limitation period is extended so as not to end before the expiry of one year after the day on which the person died.

Acknowledgments

15.—(1) If a person acknowledges the existence of a claim for payment of a liquidated sum, the recovery of property, the enforcement of a charge on property or relief from enforcement of a charge on property, the act or omission on which the claim is

capacité d'introduire une instance antérieurement à la date de son introduction, si, au moment où ont été commises les voies de fait, il vivait en relation intime avec une des parties aux voies de fait ou en dépendait financièrement ou autrement.

Idem

(3) À moins de preuve du contraire, l'auteur d'une demande en justice fondée sur une agression sexuelle est présumé avoir été dans l'incapacité d'introduire une instance antérieurement à la date de son introduction.

Tentative de règlement

11 Si l'auteur d'une demande en justice et une personne contre laquelle est faite la demande en justice ont convenu de soumettre la demande en justice à un tiers indépendant pour qu'il statue sur celle-ci, le délai de prescription fixé à l'article 4 ne court pas tant que la demande est en instance.

Mandants

12 Pour l'application de l'alinéa 5 (1) a), dans le cas d'une instance introduite par un mandant, si son mandataire connaissait les faits visés à cet alinéa avant que le mandant ne les ait appris et qu'il était dans l'obligation de les lui communiquer, le mandant est réputé en avoir pris connaissance le jour où le mandataire les a appris.

Ayants droit

13 (1) Pour l'application de l'alinéa 5 (1) a), dans le cas d'une instance introduite par un ayant droit d'un prédécesseur titulaire du droit, du titre ou de l'intérêt, si le prédécesseur connaissait ou aurait dû connaître les faits visés à cet alinéa avant que l'ayant droit ne les ait appris, ce dernier est réputé avoir pris connaissance des faits le jour où le prédécesseur les a appris ou aurait dû les apprendre.

Idem

(2) Le prédécesseur est considéré comme ayant dû avoir appris les faits visés à l'alinéa 5 (1) a) le jour où toute personne raisonnable se trouvant dans la même situation et possédant les mêmes capacités que lui aurait dû les avoir appris.

Représentant successoral

(3) Pour l'application du présent article, la personne décédée qui était l'auteur d'une demande en justice est un prédécesseur de son représentant successoral.

Décès

14 Si l'auteur d'une demande en justice décède et que le délai de prescription fixé à l'article 4 doit expirer dans la période d'un an qui suit sa date de décès, le délai de prescription est prorogé de façon à ne pas prendre fin avant l'expiration de cette période d'un an.

Reconnaissances

15 (1) Si une personne reconnaît l'existence d'une demande en justice de paiement d'une somme déterminée, de recouvrement d'un bien, d'exécution d'une charge grevant un bien ou d'exonération de l'exécution d'une charge grevant un bien, l'acte ou based shall be deemed to have taken place on the day on which the acknowledgment was made.

Interest

(2) An acknowledgment of the existence of a claim for interest is an acknowledgment of a claim for the principal and for interest falling due after the acknowledgment is made.

Collateral

(3) An acknowledgment of the existence of a claim to realize on or redeem collateral under a security agreement or to recover money in respect of the collateral is an acknowledgment by any other person who later comes into possession of it.

Realization

(4) A debtor's performance of an obligation under or in respect of a security agreement is an acknowledgment by the debtor of the existence of a claim by the creditor for realization on the collateral under the agreement.

Redemption

(5) A creditor's acceptance of a debtor's payment or performance of an obligation under or in respect of a security agreement is an acknowledgment by the creditor of the existence of a claim by the debtor for redemption of the collateral under the agreement.

Trustees

(6) An acknowledgment by a trustee is an acknowledgment by any other person who is or who later becomes a trustee of the same trust.

Property

(7) An acknowledgment of the existence of a claim to recover or enforce an equitable interest in property by a person in possession of it is an acknowledgment by any other person who later comes into possession of it.

Liquidated sum

(8) Subject to subsections (9) and (10), this section applies to an acknowledgment of the existence of a claim for payment of a liquidated sum even though the person making the acknowledgment refuses or does not promise to pay the sum or the balance of the sum still owing.

Application

(9) This section does not apply unless the acknowledgment is made to the person with the claim, the person's agent or an official receiver or trustee acting under the *Bankruptcy Act* (Canada) before the expiry of the limitation period applicable to the claim.

Idem

(10) Subsections (1), (2), (3), (6) and (7) do not apply unless the acknowledgment is in writing and signed by the person making it or

l'omission sur lequel est fondée la demande en justice est réputé avoir eu lieu le jour où a eu lieu la reconnaissance.

Intérêts

(2) La reconnaissance de l'existence d'une demande en justice de paiement d'intérêts constitue la reconnaissance d'une demande en justice de paiement du capital et des intérêts échus après que la reconnaissance a lieu.

Bien donné en garantie

(3) La reconnaissance de l'existence d'une demande en justice de réalisation ou de rachat d'un bien donné en garantie aux termes d'un contrat de sûreté, ou de recouvrement d'une somme d'argent à l'égard du bien donné en garantie constitue une reconnaissance par toute autre personne qui en prend par la suite possession.

Réalisation

(4) L'exécution par un débiteur d'une obligation aux termes ou à l'égard d'un contrat de sûreté constitue une reconnaissance par celui-ci de l'existence d'une demande en justice du créancier en vue de la réalisation du bien donné en garantie aux termes du contrat.

Rachat

(5) L'acceptation par un créancier d'un paiement ou de l'exécution d'une obligation par un débiteur aux termes ou à l'égard d'un contrat de sûreté constitue une reconnaissance de la part du créancier de l'existence d'une demande en justice du débiteur en vue du rachat du bien donné en garantie aux termes du contrat.

Fiduciaires

(6) La reconnaissance par un fiduciaire constitue une reconnaissance par toute autre personne qui est ou sera fiduciaire de la même fiducie.

Bien

(7) La reconnaissance par la personne qui est en possession d'un bien de l'existence d'une demande en justice de recouvrement ou d'exécution d'un intérêt en equity sur ce bien constitue une reconnaissance par toute autre personne qui en prend possession par la suite.

Somme déterminée

(8) Sous réserve des paragraphes (9) et (10), le présent article s'applique à la reconnaissance de l'existence d'une demande en justice de paiement d'une somme déterminée, même si l'auteur de la reconnaissance refuse de payer cette somme ou le solde impayé de cette somme, ou ne s'y engage pas.

Conditions d'application

(9) Le présent article ne s'applique que si la reconnaissance est faite à l'auteur de la demande en justice, à son mandataire ou à un séquestre officiel ou syndic agissant aux termes de la *Loi sur la faillite* (Canada) avant l'expiration du délai de prescription qui s'applique à la demande en justice.

Idem

(10) Les paragraphes (1), (2), (3), (6) et (7) ne s'appliquent que si la reconnaissance est faite par écrit et revêtue de la signature

the person's agent, or, in the case of a claim for payment of a liquidated sum, is in the form of a part payment of the sum.

Notice of possible claim

16.—(1) A person against whom another person may have a claim may serve a notice of possible claim on the other person.

Contents

(2) A notice of possible claim shall be in writing and be signed by the person issuing it or the issuing person's solicitor, and shall,

(a) describe the injury, loss or damage that the person issuing the notice suspects may have occurred;

(b) indicate the extent to which the person issuing the notice suspects that the injury, loss or damage may have been caused by the issuing person;

(c) state that any claim that the other person has could be extinguished because of the expiry of a limitation period; and

(d) state the issuing person's name and address for service.

Effect

(3) The fact that a notice of possible claim has been served on a person may be considered by a court in determining when the limitation period in respect of the person's claim began to run.

Exception

(4) Subsection (3) does not apply to a person who is not represented by a court-appointed litigation guardian and who, when served with the notice,

(a) was a minor; or

(b) was incapable of commencing a proceeding because of his or her physical, mental or psychological condition or because of physical restraint, war or war-like conditions.

Acknowledgment

(5) A notice of possible claim is not an acknowledgment for the purpose of section 15.

Admission

(6) A notice of possible claim is not an admission of the validity of the claim.

ULTIMATE LIMITATION PERIODS

Ultimate limitation periods

17.—(1) Even if the limitation period established by any other section of this Act in respect of a claim has not expired, no proceeding shall be commenced in respect of the claim after the expiry of a limitation period established by this section.

de son auteur ou du mandataire de celui-ci ou, dans le cas d'une demande en justice de paiement d'une somme déterminée, si la reconnaissance prend la forme d'un paiement partiel de la somme.

Avis de demande en justice éventuelle

16 (1) La personne contre laquelle une autre personne peut être fondée à faire une demande en justice peut lui signifier un avis de demande en justice éventuelle.

Contenu

(2) L'avis de demande en justice éventuelle est présenté par écrit et signé par la personne qui l'émet ou par son avocat. Cet avis renferme les précisions suivantes :

a) une description des préjudices, des pertes ou des dommages que l'émetteur de l'avis soupçonne être survenus;

b) la mesure dans laquelle l'émetteur de l'avis soupçonne avoir pu causer les préjudices, les pertes ou les dommages en question;

c) le fait que toute demande en justice que l'autre personne peut faire puisse s'éteindre en raison de l'expiration d'un délai de prescription;

d) les nom et domicile élu de l'émetteur de l'avis.

Effet

(3) Le fait qu'un avis de demande en justice éventuelle a été signifié à une personne peut être pris en considération par un tribunal pour établir à quel moment le délai de prescription relatif à la demande en justice de la personne a commencé à courir.

Exception

(4) Le paragraphe (3) ne s'applique pas à la personne qui n'est pas représentée par un tuteur à l'instance nommé par le tribunal et qui, au moment où l'avis lui a été signifié :

a) soit était mineure;

b) soit était dans l'incapacité d'introduire une instance en raison de son état physique, mental ou psychologique, ou en raison d'un empêchement physique, d'un état de guerre ou de conditions analogues à l'état de guerre.

Reconnaissance

(5) L'avis de demande en justice éventuelle ne constitue pas une reconnaissance pour l'application de l'article 15.

Aveu

(6) L'avis de demande en justice éventuelle ne constitue pas un aveu selon lequel la demande en justice est fondée.

DÉLAIS DE PRESCRIPTION ULTIMES

Délais de prescription ultimes

17 (1) Même si le délai de prescription créé par tout autre article de la présente loi dans le cas d'une demande en justice n'a pas expiré, aucune instance relative à cette demande ne peut être introduite après expiration du délai de prescription créé par le présent article.

General

(2) Subject to this section, no proceeding shall be commenced in respect of any claim after the expiry of thirty years after the day on which the act or omission on which the claim is based took place.

Idem

(3) The limitation period established by subsection (2) does not run in respect of a claim,

- (a) during any time in which the person with the claim,
  - (i) was incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition or because of physical restraint, war or war-like conditions, and
  - (ii) was not represented by a court-appointed litigation guardian; or
- (b) during any time in which the person against whom the claim is made,
  - (i) wilfully concealed from the person with the claim the fact that injury, loss or damage had occurred, that it had been caused by or contributed to by an act or omission or that the act or omission was that of the person against whom the claim is made, or
  - (ii) wilfully misled the person with the claim as to the appropriateness of commencing a proceeding in order to remedy the injury, loss or damage.

Purchasers for value

(4) No proceeding against a purchaser of property for value acting in good faith shall be commenced in respect of conversion of the property after the expiry of two years after the day on which the property was converted.

Health facilities

(5) No proceeding shall be commenced in respect of a claim based on the negligent act or omission of a health facility or a health facility employee after the expiry of ten years after the day on which the act or omission took place.

Health practitioners

(6) No proceeding shall be commenced in respect of a claim based on the malpractice or negligent act or omission of a health practitioner after the expiry of ten years after the day on which the malpractice or negligent act or omission took place.

Disposition générale

(2) Sous réserve du présent article, l'instance relative à une demande en justice se prescrit par trente ans à compter du jour où a eu lieu l'acte ou l'omission qui a donné naissance à la demande en justice.

Idem

(3) Le délai de prescription fixé au paragraphe (2) dans le cas d'une demande en justice ne court pas, selon le cas :

- a) pendant toute période au cours de laquelle l'auteur de la demande en justice :
  - (i) d'une part, était dans l'incapacité d'introduire une instance relative à la demande en justice en raison de son état physique, mental ou psychologique, ou en raison d'un empêchement physique, d'un état de guerre ou de conditions analogues à l'état de guerre,
  - (ii) d'autre part, n'était pas représenté par un tuteur à l'instance nommé par le tribunal;
- b) pendant toute période au cours de laquelle la personne contre laquelle est faite la demande en justice :
  - (i) soit a dissimulé sciemment à l'auteur de la demande en justice le fait que les préjudices, les pertes ou les dommages s'étaient produits, qu'ils avaient été causés ou causés en partie par un acte ou une omission ou que l'acte ou l'omission était le fait de la personne contre laquelle est faite la demande en justice,
  - (ii) soit a induit sciemment en erreur l'auteur de la demande en justice quant à l'opportunité d'introduire une instance pour obtenir réparation des préjudices, des pertes ou des dommages subis.

Acquéreurs à titre onéreux

(4) L'instance relative à l'appropriation illicite d'un bien qui est engagée contre l'acquéreur à titre onéreux du bien qui agit de bonne foi se prescrit par deux ans à compter du jour où a eu lieu l'appropriation illicite.

Établissements de santé

(5) L'instance relative à une demande en justice fondée sur l'acte de négligence ou l'omission par négligence d'un établissement de santé ou d'un employé de l'établissement de santé se prescrit par dix ans à compter du jour où a eu lieu l'acte ou l'omission.

Praticiens de la santé

(6) L'instance relative à une demande en justice fondée sur la faute professionnelle, l'acte de négligence ou l'omission par négligence d'un praticien de la santé se prescrit par dix ans à compter du jour où a été commis la faute professionnelle, l'acte de négligence ou l'omission par négligence.

Exception

(7) Subsections (5) and (6) do not apply if the claim is based on the leaving of a foreign object having no therapeutic or diagnostic purpose in the body of the person with the claim.

Improvements

(8) In the case of an improvement to real property carried out under a contract, no proceeding shall be commenced in respect of a claim based on a deficiency in the design, construction or general review of the improvement after the expiry of ten years after the first day on which the contract was substantially performed within the meaning of the *Construction Lien Act, 1983*.

Periods not to run

(9) The limitation periods established by subsections (5), (6) and (8) do not run in respect of a claim during any time in which,

(a) the person with the claim was not represented by a court-appointed litigation guardian and,

  (i) was a minor, or

  (ii) was incapable of commencing a proceeding because of his or her physical, mental or psychological condition or because of physical restraint, war or war-like conditions; or

(b) the person against whom the claim is made,

  (i) wilfully concealed from the person with the claim the fact that injury, loss or damage had occurred, that it had been caused by or contributed to by an act or omission or that the act or omission was that of the person against whom the claim is made, or

  (ii) wilfully misled the person with the claim as to the appropriateness of commencing a proceeding in order to remedy the injury, loss or damage.

Burden

(10) The burden of proving that subsection (3) or (9) applies is on the person with the claim.

Day of occurrence

(11) For the purposes of this section, the day an act or omission on which a claim is based took place is,

Exception

(7) Les paragraphes (5) et (6) ne s'appliquent pas si la demande en justice est fondée sur le fait qu'un objet étranger sans but thérapeutique ou diagnostique a été laissé dans le corps de l'auteur de la demande en justice.

Améliorations

(8) Dans le cas d'améliorations qui sont apportées à un bien immeuble aux termes d'un contrat, l'instance relative à une demande en justice fondée sur un défaut de conception ou de construction, ou sur une lacune de l'examen de conformité de ces améliorations, se prescrit par dix ans à compter du jour où le contrat était exécuté pour l'essentiel au sens qu'a cette expression dans la loi intitulée *Construction Lien Act, 1983* (*«Loi de 1983 sur le privilège dans l'industrie de la construction»*).

Interruption des délais

(9) Les délais de prescription créés par les paragraphes (5), (6) et (8) ne courent pas dans le cas d'une demande en justice pendant toute période au cours de laquelle, selon le cas :

a) l'auteur de la demande en justice n'était pas représenté par un tuteur à l'instance nommé par le tribunal et :

  (i) soit était mineur,

  (ii) soit était dans l'incapacité d'introduire une instance en raison de son état physique, mental ou psychologique, ou en raison d'un empêchement physique, d'un état de guerre ou de conditions analogues à l'état de guerre;

b) la personne contre laquelle est faite la demande en justice :

  (i) soit a dissimulé sciemment à l'auteur de la demande en justice le fait que les préjudices, les pertes ou les dommages s'étaient produits, qu'ils avaient été causés ou causés en partie par un acte ou une omission ou que l'acte ou l'omission était le fait de la personne contre laquelle est faite la demande en justice,

  (ii) soit a induit sciemment en erreur l'auteur de la demande en justice quant à l'opportunité d'introduire une instance pour obtenir réparation des préjudices, des pertes ou des dommages subis.

Fardeau de la preuve

(10) Il incombe à l'auteur de la demande en justice de prouver que le paragraphe (3) ou (9) s'applique.

Détermination du jour où a eu lieu l'acte ou l'omission

(11) Pour l'application du présent article, le jour où a eu lieu un acte ou une omission sur lequel est fondée une demande en justice est :

(a) in the case of a continuous act or omission, the day on which the act or omission ceased;

(b) in the case of a series of acts or omissions in respect of the same obligation, the day on which the last act or omission in the series occurred;

(c) in the case of a default in performing a demand obligation, the day on which the default occurred.

Extinguishment

(12) Upon the expiry of the limitation period established by this section, the claim and any right, title or interest on which it is based are extinguished.

Definitions

(13) For the purposes of this section,

"design" means a plan, sketch, drawing, graphic representation or specification intended to govern the construction of an improvement to real property; ("conception")

"general review" means an examination of an improvement to real property to determine whether the construction of it is in general conformity with the design; ("examen de conformité")

"health facility" means,

(a) a hospital as defined in the *Public Hospitals Act*,

(b) a private hospital licensed under the *Private Hospitals Act*,

(c) a home for special care established, approved or licensed under the *Homes for Special Care Act*,

(d) an independent health facility licensed under the *Independent Health Facilities Act, 1989*,

(e) a nursing home licensed under the *Nursing Homes Act*, or

(f) a facility designated as a psychiatric facility under the *Mental Health Act*; ("établissement de santé")

"health practitioner" means health practitioner as defined in the *Consent to Treatment Act, 1991*; ("praticien de la santé")

"improvement" means any alteration, addition or repair to or construction, erection or installation on land, and includes the demolition or removal of any structure or part of a structure on land. ("amélioration")

a) dans le cas d'un acte ou d'une omission continus, le jour où a cessé l'acte ou l'omission;

b) dans le cas d'une série d'actes ou d'omissions à l'égard de la même obligation, le jour où a eu lieu le dernier acte ou la dernière omission de la série;

c) dans le cas du défaut d'exécution d'un engagement à vue, le jour où a eu lieu le défaut.

Extinction

(12) À l'expiration du délai de prescription créé par le présent article, la demande en justice et tout droit, titre ou intérêt sur lequel elle est fondée s'éteignent.

Définitions

(13) Les définitions qui suivent s'appliquent au présent article.

«amélioration» S'entend de tout agrandissement ou de toute modification, reparation, construction ou installation sur un bien-fonds. Ce terme s'entend en outre de la démolition ou de l'enlèvement d'une structure ou d'une partie de structure située sur un bien-fonds. («improvement»)

«conception» S'entend des plans, des croquis, des dessins, des représentations graphiques ou des devis destinés à régir les travaux que nécessitent les améliorations à apporter à un bien immeuble. («design»)

«établissement de santé» S'entend de l'un ou de l'autre des établissements suivants :

a) un hôpital tel que ce terme est défini dans la loi intitulée *Public Hospitals Act* (*«Loi sur les hôpitaux publics»*),

b) un hôpital privé exploité en vertu d'un permis aux termes de la loi intitulée *Private Hospitals Act* (*«Loi sur les hôpitaux privés»*),

c) un foyer de soins spéciaux ouvert, agréé ou titulaire d'un permis aux termes de la loi intitulée *Homes for Special Care Act* (*«Loi sur les foyers de soins spéciaux»*),

d) un établissement de santé autonome exploité en vertu d'un permis aux termes de la loi intitulée *Independent Health Facilities Act, 1989* (*«Loi de 1989 sur les établissements de santé autonomes»*),

e) une maison de soins infirmiers exploitée en vertu d'un permis aux termes de la loi intitulée *Nursing Homes Act* (*«Loi sur les maisons de soins infirmiers»*),

f) un établissement désigné comme étant un établissement psychiatrique aux termes de la loi intitulée *Mental Health*

NO LIMITATION PERIOD

No limitation period

18. There is no limitation period in respect of,

(a) a proceeding for judicial review;

(b) a proceeding for a declaration;

(c) a proceeding to enforce an order of a court;

(d) a proceeding to enforce a provision in a domestic contract or paternity agreement for the payment of support that is enforceable under section 35 of the *Family Law Act, 1986*;

(e) a proceeding to enforce an award in an arbitration to which the *Arbitrations Act* applies;

(f) a proceeding by a debtor in possession of collateral to redeem it;

(g) a proceeding by a creditor in possession of collateral to realize on it; or

(h) a proceeding in respect of a claim based on a sexual assault if at the time of the assault one of the parties to it had charge of the person assaulted or was in a position of trust or authority in relation to the person or was someone on whom he or she was dependent, whether or not financially.

GENERAL RULES

Contribution and indemnity

19. For the purposes of subsection 5 (2) and section 17, in the case of a claim by one alleged wrongdoer against another alleged wrongdoer for contribution and indemnity, the day on which the first alleged wrongdoer was served with notice of the claim in respect of which contribution and indemnity is sought shall be deemed to be the day the act or omission on which that alleged wrongdoer's claim is based took place.

Act (*«Loi sur la santé mentale»*). («health facility»)

«examen de conformité» S'entend de l'examen des améliorations apportées à un bien immeuble pour vérifier si les travaux exécutés sont conformes à la conception. («general review»)

«praticien de la santé» S'entend d'un praticien de la santé tel que ce terme est défini dans la *Loi de 1991 sur le consentement au traitement*. («health practitioner»)

ABSENCE DE DÉLAI DE PRESCRIPTION

Absence de délai de prescription

18 Aucun délai de prescription n'est prévu dans les cas suivants :

a) les instances en révision judiciaire;

b) les instances en déclaration judiciaire;

c) les instances en vue de faire exécuter des ordonnances judiciaires;

d) les instances en vue de faire exécuter des dispositions alimentaires de contrats familiaux ou d'accords de paternité qui sont exécutoires en vertu de l'article 35 de la *Loi de 1986 sur le droit de la famille*;

e) les instances en vue de faire exécuter les sentences arbitrales rendues dans le cadre d'arbitrages auxquels s'applique la loi intitulée *Arbitrations Act* (*«Loi sur l'arbitrage»*);

f) les instances engagées par les débiteurs en possession des biens donnés en garantie en vue de les racheter;

g) les instances engagées par les créanciers en possession des biens donnés en garantie en vue de les réaliser;

h) les instances relatives aux demandes en justice fondées sur des agressions sexuelles si, au moment de la commission de l'agression, l'une des parties à l'agression était responsable de la personne agressée ou se trouvait dans une position de confiance ou d'autorité par rapport à elle, ou la personne agressée dépendait financièrement ou autrement de l'une de ces parties.

RÈGLES GÉNÉRALES

Partage de la responsabilité

19 Pour l'application du paragraphe 5 (2) et de l'article 17, dans le cas d'une demande en justice faite par l'un des auteurs prétendus d'un préjudice contre un autre aux fins du partage de la responsabilité, le jour où est signifié au premier auteur prétendu du préjudice l'avis de demande en justice aux fins du partage de la responsabilité est réputé être le jour où a eu lieu l'acte ou l'omission sur lequel est fondée la demande en justice de cet auteur.

Other Acts

20.—(1) A limitation period set out in another Act is of no effect unless,

(a) the provision establishing it is specified in the Schedule to this Act; or

(b) the provision establishing it incorporates by reference a provision specified in the Schedule to this Act.

Idem

(2) If there is a conflict between a limitation period established by a provision described in subsection (1) and one established by any other provision of this Act, the limitation period established by the provision described in subsection (1) prevails.

Time not to run

(3) A limitation period established by a provision described in subsection (1) does not run in respect of a claim during any time in which,

(a) the person with the claim was not represented by a court-appointed litigation guardian and,

(i) was a minor, or

(ii) was incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition or because of physical restraint, war or war-like conditions; or

(b) the person with the claim and the person against whom the claim is made are both awaiting its resolution by an independent third party.

Adding party

21.—(1) If a limitation period in respect of a claim against a person has expired, the claim shall not be pursued by adding the person as a party to any existing proceeding.

Misdescription

(2) Subsection (1) does not prevent the correction of a misnaming or misdescription of a party.

Agreement

22. A limitation period under this Act or any other Act may be reduced or extended by a written agreement.

Notice

23. Despite any other Act, a claim is not barred because the person with the claim failed to comply with a requirement under that Act to give notice of the claim unless the person against whom the claim is made has been prejudiced by the failure to comply.

Conflict of laws

24. For the purpose of applying the rules regarding conflict of laws, the limitations law

Autres lois

20 (1) Tout délai de prescription fixé par une autre loi est sans effet à moins que, selon le cas :

a) la disposition le créant ne soit mentionnée à l'annexe de la présente loi;

b) la disposition le créant n'inclue, par renvoi, une disposition mentionnée à l'annexe de la présente loi.

Idem

(2) En cas d'incompatibilité entre le délai de prescription créé par une disposition visée au paragraphe (1) et celui créé par toute autre disposition de la présente loi, c'est celui créé par la disposition visée au paragraphe (1) qui l'emporte.

Interruption du délai

(3) Le délai de prescription créé par une disposition visée au paragraphe (1) ne court pas dans le cas d'une demande en justice pendant toute période au cours de laquelle, selon le cas :

a) l'auteur de la demande en justice n'était pas représenté par un tuteur à l'instance nommé par le tribunal et :

(i) soit était mineur,

(ii) soit était dans l'incapacité d'introduire une instance à l'égard de la demande en justice en raison de son état physique, mental ou psychologique, ou en raison d'un empêchement physique, d'un état de guerre ou de conditions analogues à l'état de guerre;

b) l'auteur de la demande en justice et la personne contre laquelle elle est faite attendent qu'un tiers indépendant ait réglé cette demande.

Jonction comme partie

21 (1) En cas d'expiration du délai de prescription relatif à une demande en justice faite contre une personne, la demande en justice ne peut être formée par jonction de cette personne comme partie à une instance déjà en cours.

Description erronée

(2) Le paragraphe (1) n'a pas pour effet d'empêcher que soit corrigé le nom inexact ou la description erronée d'une partie.

Accord

22 Le délai de prescription prévu par la présente loi ou par toute autre loi peut être abrégé ou prorogé par accord écrit.

Avis

23 Malgré toute autre loi, une demande en justice n'est pas irrecevable du seul fait que son auteur a omis d'observer l'exigence prévue par cette loi voulant qu'il donne un avis de la demande en justice, sauf si la personne contre laquelle est faite la demande en justice a été lésée par l'inobservation de cette exigence.

Conflit de lois

24 Pour l'application des règles de conflit de lois, les lois de l'Ontario ou de tout autre of Ontario or any other jurisdiction is substantive law.

Pre-Act claims

25.—(1) The following rules apply in respect of claims based on acts or omissions that took place before the coming into force of this Act:

1. If the former limitation period expired before the effective date, no proceeding shall be commenced in respect of the claim on or after that date.
2. If the former limitation period did not expire before the effective date and if under this Act no limitation period would apply in respect of the claim were it based on an act or omission that took place on or after that date, there is no limitation period.
3. Subject to rule 4, if the former limitation period did not expire before the effective date and if under this Act a limitation period would apply in respect of the claim were it based on an act or omission that took place on or after that date, this Act applies.
4. If the former limitation period did not expire before the effective date and will not expire until after the expiry of the limitation period that would have applied in respect of the claim under rule 3, no proceeding shall be commenced after the expiry of the former limitation period or the second anniversary of the effective date, whichever is earlier.
5. If there was no former limitation period, this Act applies.
6. Despite any other rule, in the case of a claim for payment of a debt owed to the Crown that was due before the effective date, no proceeding shall be commenced in respect of the claim after the expiry of six years after the effective date.
7. Despite any other rule and even if the former limitation period expired before the effective date, in the case of a claim based on assault or sexual assault, if under this Act a limitation period would apply to the claim had the assault or sexual assault taken place on or after the effective date, this Act applies.

ressort relatives à la prescription constituent des règles juridiques de fond.

Demandes en justice antérieures à la Loi

25 (1) Les règles suivantes s'appliquent dans le cas des demandes en justice fondées sur des actes ou des omissions qui ont eu lieu avant l'entrée en vigueur de la présente loi :

1. Si l'ancien délai de prescription a expiré avant la date de l'entrée en vigueur, aucune instance relative à la demande en justice ne peut être introduite à cette date ou par la suite.
2. Si l'ancien délai de prescription n'a pas expiré avant la date de l'entrée en vigueur et qu'aux termes de la présente loi, aucun délai de prescription ne s'appliquait à la demande en justice si celle-ci était fondée sur un acte ou une omission ayant eu lieu à cette date ou par la suite, aucun délai de prescription ne s'applique.
3. Sous réserve de la règle 4, si l'ancien délai de prescription n'a pas expiré avant la date de l'entrée en vigueur et qu'aux termes de la présente loi, un délai de prescription s'appliquait à la demande en justice si celle-ci était fondée sur un acte ou une omission ayant eu lieu à cette date ou par la suite, la présente loi s'applique.
4. Si l'ancien délai de prescription n'a pas expiré avant la date de l'entrée en vigueur et qu'il n'expirera qu'après l'expiration du délai de prescription qui se serait appliqué à la demande en justice selon la règle 3, aucune instance ne peut être introduite après l'expiration de l'ancien délai de prescription ou après le deuxième anniversaire de la date de l'entrée en vigueur, si cet anniversaire arrive en premier.
5. S'il n'y avait aucun ancien délai de prescription, la présente loi s'applique.
6. Malgré toute autre règle, dans le cas d'une demande en justice de paiement d'une dette envers la Couronne qui était impayée avant la date de l'entrée en vigueur, toute instance relative à la demande en justice se prescrit par six ans à compter de la date de l'entrée en vigueur.
7. Malgré toute autre règle et même si l'ancien délai de prescription a expiré avant la date de l'entrée en vigueur, dans le cas d'une demande en justice fondée sur des voies de fait ou sur une agression sexuelle, si, aux termes de la présente loi, un délai de prescription s'appliquait à la demande en justice dans le cas où les voies de fait ou l'agression sexuelle avaient eu lieu à la

8. Despite any other rule and even if the former limitation period expired before the effective date, in the case of a claim based on a sexual assault, if under this Act no limitation period would apply to the claim had the sexual assault taken place on or after the effective date, there is no limitation period.

Definitions

(2) In this section,

"effective date" means the day on which this Act comes into force; ("date de l'entrée en vigueur")

"former limitation period" means the limitation period that applied in respect of the claim before the coming into force of this Act. ("ancien délai de prescription")

AMENDMENTS AND REPEALS

26. The following are repealed:

1. **Section 25 of the *Ambulance Act*.**
2. **Subsection 72 (2), subsection 99 (2), section 100, subsections 103 (1) and (2), subsection 111 (2), subsection 168 (1) and subsection 169 (1) of the *Co-operative Corporations Act*.**
3. **Subsection 123 (1) of the *Credit Unions and Caisses Populaires Act*.**
4. **Section 31 of the *Denture Therapists Act*.**
5. **Subsections 87 (13) and (14) of the *Environmental Protection Act*.**
6. **Section 72 of the *Estates Act*.**
7. **Section 50 of the *Family Law Act, 1986*.**
8. **Section 17 of the *Health Disciplines Act*.**
9. **Section 180 of the *Highway Traffic Act*.**
10. **Subsections 183 (1) and (2), Statutory Condition 6 (3) of section 207, subsection 226 (2) and Statutory Condition 12 of section 253 of the *Insurance Act*.**
11. **Section 6 of the *Libel and Slander Act*.**
12. **Subsections 106 (6) and 107 (2) of the *Loan and Trust Corporations Act, 1987*.**

date de l'entrée en vigueur ou par la suite, la présente loi s'applique.

8. Malgré toute autre règle et même si l'ancien délai de prescription a expiré avant la date de l'entrée en vigueur, dans le cas d'une demande en justice fondée sur une agression sexuelle, si, aux termes de la présente loi, aucun délai de prescription ne s'appliquait à la demande en justice dans le cas où l'agression sexuelle avait eu lieu à la date de l'entrée en vigueur ou par la suite, aucun délai de prescription ne s'applique.

Définitions

(2) Les définitions qui suivent s'appliquent au présent article.

«ancien délai de prescription» Le délai de prescription qui s'appliquait à la demande en justice avant l'entrée en vigueur de la présente loi. («former limitation period»)

«date de l'entrée en vigueur» Le jour où la présente loi entre en vigueur. («effective date»)

MODIFICATIONS ET ABROGATIONS

26 Les dispositions suivantes sont abrogées :

1. **L'article 25 de la *Loi sur les ambulances*.**
2. **Les paragraphes 72 (2) et 99 (2), l'article 100, les paragraphes 103 (1) et (2), ainsi que les paragraphes 111 (2), 168 (1) et 169 (1) de la *Loi sur les sociétés coopératives*.**
3. **Le paragraphe 123 (1) de la *Loi sur les caisses populaires et les credit unions*.**
4. **L'article 31 de la *Loi sur les denturologues*.**
5. **Les paragraphes 87 (13) et (14) de la *Loi sur la protection de l'environnement*.**
6. **L'article 72 de la *Loi sur les successions*.**
7. **L'article 50 de la *Loi de 1986 sur le droit de la famille*.**
8. **L'article 17 de la *Loi sur les sciences de la santé*.**
9. **L'article 180 du *Code de la route*.**
10. **Les paragraphes 183 (1) et (2), la condition légale 6 (3) de l'article 207, le paragraphe 226 (2) et la condition légale 12 de l'article 253 de la *Loi sur les assurances*.**
11. **L'article 6 de la *Loi sur la diffamation*.**
12. **Les paragraphes 106 (6) et 107 (2) de la *Loi de 1987 sur les compagnies de prêt et de fiducie*.**

13. Subsection 4 (4) of the *Master and Servant Act*.	13. Le paragraphe 4 (4) de la *Loi sur les employeurs et employés*.
14. Section 62 of the *Mental Health Act*.	14. L'article 62 de la *Loi sur la santé mentale*.
15. Section 9 of the *Mental Hospitals Act*.	15. L'article 9 de la *Loi sur les hôpitaux psychiatriques*.
16. Subsection 284 (2) of the *Municipal Act*.	16. Le paragraphe 284 (2) de la *Loi sur les municipalités*.
17. Section 9 of the *Negligence Act*.	17. L'article 9 de la *Loi sur le partage de la responsabilité*.
18. Section 13 of the *Off-Road Vehicles Act, 1983*.	18. L'article 13 de la *Loi de 1983 sur les véhicules tout terrain*.
19. Subsection 30 (1) of the *Ontario Mental Health Foundation Act*.	19. Le paragraphe 30 (1) de la *Loi sur la Fondation ontarienne de la santé mentale*.
20. Subsection 31 (1) of the *Power Corporation Act*.	20. Le paragraphe 31 (1) de la *Loi sur la Société de l'électricité*.
21. Subsection 29 (3) of the *Private Hospitals Act*.	21. Le paragraphe 29 (3) de la *Loi sur les hôpitaux privés*.
22. Section 47 of the *Professional Engineers Act, 1984*.	22. L'article 47 de la *Loi de 1984 sur les ingénieurs*.
23. Section 11 of the *Public Authorities Protection Act*.	23. L'article 11 de la *Loi sur l'immunité des personnes exerçant des attributions d'ordre public*.
24. Section 28 of the *Public Hospitals Act*.	24. L'article 28 de la *Loi sur les hôpitaux publics*.
25. Section 12 of the *Public Officers Act*.	25. L'article 12 de la *Loi sur les fonctionnaires*.
26. Subsection 33 (5) of the *Public Transportation and Highway Improvement Act*.	26. Le paragraphe 33 (5) de la *Loi sur l'aménagement des voies publiques et des transports en commun*.
27. Section 32 of the *Public Utilities Act*.	27. L'article 32 de la *Loi sur les services publics*.
28. Section 13 of the *Radiological Technicians Act*.	28. L'article 13 de la *Loi sur les techniciens en radiologie*.
29. Subsection 139 (4) and subsections 267 (1) and (2) of *The Railways Act*, being chapter 331 of the Revised Statutes of Ontario, 1950.	29. Le paragraphe 139 (4), ainsi que les paragraphes 267 (1) et (2) de la loi intitulée *The Railways Act*, qui constitue le chapitre 331 des Lois refondues de l'Ontario de 1950.
30. Subsection 38 (7) of the *Trustee Act*.	30. Le paragraphe 38 (7) de la *Loi sur les fiduciaires*.
31. Section 86 of the *Telephone Act*.	31. L'article 86 de la *Loi sur le téléphone*.
32. Section 46 of the *Veterinarians Act, 1989*.	32. L'article 46 de la *Loi de 1989 sur les vétérinaires*.
27.—(1) Sections 42 to 55 of the *Limitations Act* are repealed and the following substituted:	**27** (1) Les articles 42 à 55 de la loi intitulée *Limitations Act* («*Loi sur la prescription des actions*») sont abrogés et remplacés par ce qui suit :

Mortgage covenant

42.—(1) No action upon a covenant contained in an indenture of mortgage or any other instrument made on or after the 1st day of July, 1894, to repay the whole or part of any money secured by a mortgage shall be commenced after the later of,

(a) the expiry of ten years after the day on which the cause of action arose; and

(b) the expiry of ten years after the day on which the interest of the person liable on the covenant in the mortgaged lands was conveyed or transferred.

Equity of redemption

(2) No action by a mortgagee against a grantee of the equity of redemption under section 19 of the *Mortgages Act* shall be commenced after the expiry of ten years after the day on which the cause of action arose.

Idem

(3) Subsections (1) and (2) do not extend the time for bringing an action if the time for bringing it is limited by any other Act.

(2) The title to the *Limitations Act* is repealed and the following substituted:

(2) Le titre de la *Loi sur la prescription des actions* est abrogé et remplacé par ce qui suit :

REAL PROPERTY PROCEEDINGS LIMITATIONS ACT

28.—(1) Clause 16 (1) (a) of the English version of the *Loan and Trust Corporations Act, 1987* is amended by adding at the end "and".

28 (1) L'alinéa 16 (1) (a) de la version anglaise de la *Loi de 1987 sur les compagnies de prêt et de fiducie* est modifié par adjonction de «and».

(2) Clause 16 (1) (b) of the Act is repealed.

(2) L'alinéa 16 (1) b) de la Loi est abrogé.

(3) Subsection 17 (1) of the Act is amended by striking out the words that follow "distribution" in the fifth line.

(3) Le paragraphe 17 (1) de la Loi est modifié par suppression de la phrase qui suit les mots «l'article 16» à la cinquième ligne.

29. Section 19 of the *Bulk Sales Act* is amended by striking out "six months" in the fifth line and substituting "two years".

29 L'article 19 de la *Loi sur la vente en bloc* est modifié par substitution, à «six months» à la cinquième ligne, de «two years».

30. Subsection 2 (1) of the *Disorderly Houses Act* is amended by striking out "within the preceding three months" in the fourth and fifth lines.

30 Le paragraphe 2 (1) de la *Loi sur les maisons de jeu et de débauche* est modifié par suppression de «within the preceding three months» aux quatrième et cinquième lignes.

31. Section 3 of the *Gaming Act* is amended by striking out "within three months thereafter" in the sixth line.

31 L'article 3 de la *Loi sur les jeux de hasard* est modifié par suppression de «within three months thereafter» à la sixième ligne.

32. Subsection 5 (1) of the *Libel and Slander Act* is amended by striking out "six weeks" in the second line and substituting "three months".

32 Le paragraphe 5 (1) de la *Loi sur la diffamation* est modifié par substitution, à «six weeks» à la deuxième ligne, de «three months».

33. Subsection 284 (6) of the *Municipal Act* is repealed and the following substituted:

33 Le paragraphe 284 (6) de la *Loi sur les municipalités* est abrogé et remplacé par ce qui suit :

Failure to give notice

(6) An action for the recovery of the damages mentioned in subsection (1) is not barred because of a failure to comply with subsection (5) unless the corporation was prejudiced by the failure.

34. Section 2 of the *Reciprocal Enforcement of Judgments Act* is amended by striking out "at any time within six years after the date of the judgment" in the sixth and seventh lines.

34 L'article 2 de la *Loi sur l'exécution réciproque de jugements* est modifié par suppression de «at any time within six years after the date of the judgment» aux sixième et septième lignes.

35.—(1) Section 10 of the *Solicitors Act* is amended by striking out "if the application is made within twelve months after payment, and" in the second and third lines.

35 (1) L'article 10 de la *Loi sur les procureurs* est modifié par suppression de «if the application is made within twelve months after payment, and» aux deuxième et troisième lignes.

(2) Section 27 of the Act is amended by striking out "within twelve months after the payment thereof" in the fifth and sixth lines.

(2) L'article 27 de la Loi est modifié par suppression de «within twelve months after the payment thereof» aux cinquième et sixième lignes.

SCHEDULE

ANNEXE

ACT	PROVISION	LOI	DISPOSITION
Amusement Devices Act, 1986	subsection 9 (1)	Loi de 1986 sur les attractions	paragraphe 9 (1)
Assessment Act	section 51	Loi sur l'évaluation foncière	article 51
Assignments and Preferences Act	subsection 26 (2)	Loi sur les cessions et préférences	paragraphe 26 (2)
Bulk Sales Act	section 19	Loi sur la vente en bloc	article 19
Business Corporations Act, 1982	subsections 34 (6), 130 (7), 131 (2), 156 (2), 184 (16) and (17), 187 (9), (13) and (14), 188 (5) and 242 (1)	Loi de 1982 sur les sociétés par actions	paragraphes 34 (6), 130 (7), 131 (2), 156 (2), 184 (16) et (17), 187 (9), (13) et (14), 188 (5) et 242 (1)
Business Practices Act	subsection 4 (5)	Loi sur les pratiques de commerce	paragraphe 4 (5)
Condominium Act	subsection 54 (2)	Loi sur les condominiums	paragraphe 54 (2)
Construction Lien Act, 1983	sections 31 and 36	Loi de 1983 sur le privilège dans l'industrie de la construction	articles 31 et 36
Corporations Act	subsections 37 (2), 76 (2), 81 (2) and 321 (1)	Loi sur les personnes morales	paragraphes 37 (2), 76 (2), 81 (2) et 321 (1)
County of Oxford Act	subsections 18 (1) and 104 (2)	Loi sur le comté d'Oxford	paragraphes 18 (1) et 104 (2)
Creditors' Relief Act	subsections 12 (2) and 32 (6)	Loi sur le désintéressement des créanciers	paragraphes 12 (2) et 32 (6)
District Municipality of Muskoka Act	subsections 15 (1) and 94 (2)	Loi sur la municipalité de district de Muskoka	paragraphes 15 (1) et 94 (2)
Drainage Act	section 111	Loi sur le drainage	article 111
Education Act	subsections 134 (7), 194 (2) and 206c (3)	Loi sur l'éducation	paragraphes 134 (7), 194 (2) et 206c (3)
Election Act, 1984	subsection 98 (4)	Loi électorale de 1984	paragraphe 98 (4)
Elevating Devices Act	subsection 23 (2)	Loi sur les ascenseurs et appareils de levage	paragraphe 23 (2)
Employee Share Ownership Plan Act, 1988	subsection 16 (3)	Loi de 1988 sur le régime d'actionnariat des employés	paragraphe 16 (3)
Energy Act	subsection 23 (2)	Loi sur les hydrocarbures	paragraphe 23 (2)
Environmental Protection Act	subsection 96 (1)	Loi sur la protection de l'environnement	paragraphe 96 (1)
Estates Act	subsections 69 (2) and 70 (2)	Loi sur les successions	paragraphes 69 (2) et 70 (2)
Estates Administration Act	subsection 17 (5)	Loi sur l'administration des successions	paragraphe 17 (5)
Expropriations Act	section 45	Loi sur l'expropriation	article 45
Family Law Act, 1986	subsection 7 (3)	Loi de 1986 sur le droit de la famille	paragraphe 7 (3)
Fines and Forfeitures Act	subsection 6 (2)	Loi sur les amendes et confiscations	paragraphe 6 (2)
Gasoline Handling Act	subsection 9 (1)	Loi sur la manutention de l'essence	paragraphe 9 (1)

Income Tax Act	section 36a	Loi de l'impôt sur le revenu	article 36a
Insurance Act	Statutory Condition 14 of section 125	Loi sur les assurances	condition légale 14 de l'article 125
Mortgages Act	subsection 20 (2)	Loi sur les hypothèques	paragraphe 20 (2)
Municipal Act	subsections 44 (2) and 137 (3), section 141 and subsections 156 (2) and 304 (4)	Loi sur les municipalités	paragraphes 44 (2) et 137 (3), article 141 et paragraphes 156 (2) et 304 (4)
Municipal Conflict of Interest Act, 1983	subsections 9 (1) and (3)	Loi de 1983 sur les conflits d'intérêts municipaux	paragraphes 9 (1) et (3)
Municipal Elections Act	subsection 87 (2), section 88c and subsection 106 (4)	Loi sur les élections municipales	paragraphe 87 (2), article 88c et paragraphe 106 (4)
Municipality of Metropolitan Toronto Act	subsections 17 (1) and 232 (2)	Loi sur la municipalité de la communauté urbaine de Toronto	paragraphes 17 (1) et 232 (2)
Ontario Home Ownership Savings Plan Act, 1988	section 18	Loi de 1988 sur le régime d'épargne-logement de l'Ontario	article 18
Operating Engineers Act	subsections 25 (2) and 28 (1)	Loi sur les mécaniciens d'exploitation	paragraphes 25 (2) et 28 (1)
Personal Property Security Act, 1989	subsections 44 (13) and (14)	Loi de 1989 sur les sûretés mobilières	paragraphes 44 (13) et (14)
Real Estate and Business Brokers Act	Clause 39 (3) (b)	Loi sur le courtage commercial et immobilier	alinéa 39 (3) (b)
Reciprocal Enforcement of Judgments (U.K.) Act, 1984	Paragraph 1 of Article III of the Schedule	Loi de 1984 sur l'exécution réciproque de jugements (Royaume-Uni)	disposition 1 de l'article III de l'annexe
Regional Municipality of Durham Act	subsections 17 (1) and 116 (2)	Loi sur la municipalité régionale de Durham	paragraphes 17 (1) et 116 (2)
Regional Municipality of Haldimand-Norfolk Act	subsections 17 (1) and 98 (2)	Loi sur la municipalité régionale de Haldimand-Norfolk	paragraphes 17 (1) et 98 (2)
Regional Municipality of Halton Act	subsections 17 (1) and 109 (2)	Loi sur la municipalité régionale de Halton	paragraphes 17 (1) et 109 (2)
Regional Municipality of Hamilton-Wentworth Act	subsections 16 (1) and 120 (2)	Loi sur la municipalité régionale de Hamilton-Wentworth	paragraphes 16 (1) et 120 (2)
Regional Municipality of Niagara Act	subsections 16 (1) and 148 (2)	Loi sur la municipalité régionale de Niagara	paragraphes 16 (1) et 148 (2)
Regional Municipality of Ottawa-Carleton Act	subsections 20 (1) and 139 (2)	Loi sur la municipalité régionale d'Ottawa-Carleton	paragraphes 20 (1) et 139 (2)
Regional Municipality of Peel Act	subsections 17 (1) and 104 (2)	Loi sur la municipalité régionale de Peel	paragraphes 17 (1) et 104 (2)
Regional Municipality of Sudbury Act	subsections 16 (1) and 90 (2)	Loi sur la municipalité régionale de Sudbury	paragraphes 16 (1) et 90 (2)
Regional Municipality of Waterloo Act	subsections 16 (1) and 138 (2)	Loi sur la municipalité régionale de Waterloo	paragraphes 16 (1) et 138 (2)
Regional Municipality of York Act	subsections 16 (1) and 140 (2)	Loi sur la municipalité régionale de York	paragraphes 16 (1) et 140 (2)
Securities Act	subsection 133 (5) and section 135	Loi sur les valeurs mobilières	paragraphe 133 (5) et article 135
Small Business Development Corporations Act	section 33	Loi sur les sociétés pour l'expansion des petites entreprises	article 33
Succession Law Reform Act	section 61	Loi portant réforme du droit des successions	article 61
Tile Drainage Act	subsection 2 (3)	Loi sur le drainage au moyen de tuyaux	paragraphe 2 (3)

Woodmen's Lien for Wages Act	section 29	Loi sur le privilège des travailleurs forestiers portant sur leur salaire	article 29